

TREC

Legal Update 2

Supplement

Knowledge is the Vehicle – Service is the Goal

Serving Texas real estate licensees since 1987 with a dedication to quality real estate education.

Lloyd Hampton Real Estate Education

TREC Provider # 09844

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New NAR Ban on Pocket Listings

- November 11, 2019: The National Association of Realtors board approved a policy to drastically cut down on pocket listings.
- A 120-member NAR committee overwhelmingly approved the Clear Cooperation Policy, sending it to the organization's Executive Committee for consideration.

➤ NAR's board passed the policy 729-70.Lloyd Hampton Real Estate Education – www.LHREE.com – Lloyd@LHREE.com

1.01 Clear Cooperation: *Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public.*

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1.3 Exempt Listings: *If seller refuses to permit the listing to be disseminated by MLS, participant may then take the listing (office exclusive) and such listing shall be filed with MLS but not disseminated to other participants. The listing should be accompanied by HAR Form 300 – Seller Authorization to Exclude Listing from MLS. If an exempt listing is publicly marketed, as defined in Section 1.01, then the listing must be submitted to MLS for dissemination to all participants within one (1) business day.*

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SELLER AUTHORIZATION TO EXCLUDE LISTING FROM MULTIPLE LISTING SERVICE

HAR 300

Property Address: _____
 City: _____ Zip: _____

1. **HAR Multiple Listing Service ("MLS"):** Listing information submitted to the MLS describes the property, price and other terms and conditions under which a seller's property is offered for sale, including but not limited to the listing broker's offer of compensation to other brokers.
2. **Exposure to Buyers Through MLS and HAR.com:** Listing property with the MLS exposes a seller's property to all real estate brokers and agents (and their potential buyer clients) who subscribe to the MLS. These listings are also available to the general public through HAR.com and other real estate websites that receive and display the MLS data to potential buyers.
3. **Authorization Required to Exclude Property from the MLS:** MLS rules require real estate agents and brokers who are participants in the MLS to submit their exclusive right to sell and exclusive agency listings on residential property and vacant residential lots to the MLS within 3 days after obtaining all necessary signatures from a seller. However, you may choose to not list a property in MLS in which case the Broker must submit, within 3 days, this Authorization, signed by the Seller and the Broker to the MLS.

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The Matrix "Coming Soon" status is for use when a listing is under a valid listing agreement but not yet ready for showings or marketing to consumers on HAR.com (repairs, photos, staging, etc.).

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- Listings can stay in "Coming Soon" for up to 14 days and can be made active at any time.
- The listing will automatically reclassify to "Withdrawn" status if the listing is not made active within 14 days.
- Showings are not allowed during the "Coming Soon" status; if it's ready to show it should be in Active status.
- "Coming Soon" listings are not displayed on HAR.com or sent to other portals.

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- If you place a "Coming Soon" sign or otherwise market a property it must be added, within one business day, to Matrix as either Active or Coming Soon.
- Days on Market (DOM) does not count or accumulate during "Coming Soon" status.
- "Coming Soon" listings are available in Matrix search and emails.
- Photos are not required but can be added to "Coming Soon" listings.

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- Most brokers have a set of business ethics.
- They should be in writing as Policies and Procedures.
- Agents & staff likely follow the example of leadership.
- A broker who expects their staff to do business at a level of professionalism that they do not subscribe to themselves will often be disappointed.



TREC Rules §535.2 (NIB)
A broker who sponsors sales agents shall maintain, on a current basis, written policies & procedures to ensure that:

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- Adding a "Coming Soon" listing is just like adding an Active listing in Matrix. You will be required to choose Active or Coming Soon.
- There is also a new "Private per Seller" or PPS status in Matrix for sellers who want limited exposure in the MLS.
- PPS listings are entered into the MLS.



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Consider this...

John has 12 listings and the market is HOT! Every listing gets at least three offers and many get more. He is so busy that he doesn't have time to respond to all of the text, emails and phone calls from buyer agents asking questions about his listings. (Especially since so few of those calls turn into anything. After all, if their buyer is serious, they'll submit an offer.)

Jane is working with a buyer who is interested in one of John's listings. The market is so tight for buyers that her clients are getting discouraged. They've submitted four offers, all at list price or above, and still don't have a contract. They are stressing. They like John's listing but are concerned about previous foundation work. They want to know if there is a transferrable warranty on the work before they waste everyone's time with an offer.

Jane has reached out to John by text, email and voicemail but cannot get a response. Her buyers are doubting her. After all, it doesn't make sense that the listing agent wouldn't be working to get the house sold. Right?

1. Can you understand John's point of view?
2. Can you understand Jane's point of view?
3. Can you understand how Jane's clients are feeling?
4. How could John and Jane handle this situation better?

TREC Rules §535.2(j) (NIB)
A broker or supervisor must respond to sponsored sales agents, clients, and license holders representing other parties in real estate transactions within two calendar days.
Note: This duty trickles down to the sales agents!

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Coming Soon

- No showings by any firm
- In MLS 14 days then Active
- Not shared on consumer sites
- Not distributed outside of MLS
- Searchable by agents

Private per Seller

- Can be shown by any firm
- In MLS with limited exposure
- Not shared on consumer sites
- Not distributed outside of MLS
- Minimal property info displayed.

Office Exclusive

- Shown only by listing firm
- In MLS but not displayed
- Not shared on consumer sites
- Not distributed outside of MLS
- Must use HAR form 300

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Consider this...

Greg is a relatively new commercial agent working for a commercial real estate firm. He does not have vast knowledge of any marketplace. So, when his brother says he is moving back to Texas and only about 1 ½ hours from Greg, he offers to represent him on his home purchase. After all, it is the same Multiple Listing Service and residential sales are the easiest.

1. What information, if any, should Greg share with his brother?
2. Is Greg putting his brother's interest before his own?
3. What is the best way for Greg to have handled this situation?

TREC Rules §535.2(i) (NIB)
A broker who sponsors sales agents shall maintain written policies and procedures to ensure that each sponsored sales agent is advised of the scope of the sales agent's authorized activities and is competent to conduct such activities, including competence in the geographic market area where the sales agent represents clients.

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REPRESENTATION DISCLOSURE

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To: _____
From: _____
Concerning the Property at _____

A. Texas law requires a real estate license holder who represents a party in a proposed real estate transaction to disclose, orally or in writing, that representation at the license holder's first contact with:
(1) another party to the transaction; or
(2) another license holder who represents another party to the transaction.

B. I represent the following ☐ Seller/Landlord ☐ Buyer/Tenant: _____

The undersigned acknowledge receipt of this notice.

Signature _____ Date _____ Signature _____ Date _____

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1101RESIDENTIAL REAL ESTATE LISTING AGREEMENT
EXCLUSIVE RIGHT TO SELL

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9. INTERMEDIARY: (Check A or B only.)

☐ A. **Intermediary Status:** Broker may show the Property to interested prospective buyers who Broker represents. If a prospective buyer who Broker represents offers to buy the Property, Seller authorizes Broker to act as an intermediary and Broker will notify Seller that Broker will service the parties in accordance with one of the following alternatives.

(1) If a prospective buyer who Broker represents is serviced by an associate other than the associate servicing Seller under this Listing, Broker may notify Seller that Broker will: (a) appoint the associate then servicing Seller to communicate with, carry out instructions of, and provide opinions and advice during negotiations to Seller; and (b) appoint the associate then servicing the prospective buyer to the prospective buyer for the same purpose.

(2) If a prospective buyer who Broker represents is serviced by the same associate who is servicing Seller, Broker may notify Seller that Broker will: (a) appoint another associate to communicate with, carry out instructions of, and provide opinions and advice during negotiations to the prospective buyer; and (b) appoint the associate servicing the Seller under this Listing to the Seller for the same purpose.

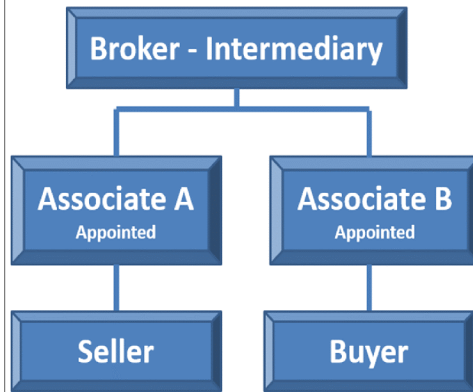
(3) Broker may notify Seller that Broker will make no appointments as described under this Paragraph 9A and, in such an event, the associate servicing the parties will act solely as Broker's intermediary representative, who may facilitate the transaction but will not render opinions or advice during negotiations to either party.

☐ B. **No Intermediary Status:** Seller agrees that Broker will not show the Property to prospective buyers who Broker represents.

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Here the associates may give advice and opinions during the negotiation.

Without appointments there can be no advice or opinions.

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1501RESIDENTIAL BUYER/TENANT REPRESENTATION
AGREEMENT

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8. INTERMEDIARY: (Check A or B only.)

☐ A. **Intermediary Status:** Client desires to see Broker's listings. If Client wishes to acquire one of Broker's listings, Client authorizes Broker to act as an intermediary and Broker will notify Client that Broker will service the parties in accordance with one of the following alternatives.

(1) If the owner of the property is serviced by an associate other than the associate servicing Client under this agreement, Broker may notify Client that Broker will: (a) appoint the associate then servicing the owner to communicate with, carry out instructions of, and provide opinions and advice during negotiations to the owner; and (b) appoint the associate then servicing Client to the Client for the same purpose.

(2) If the owner of the property is serviced by the same associate who is servicing Client, Broker may notify Client that Broker will: (a) appoint another associate to communicate with, carry out instructions of, and provide opinions and advice during negotiations to Client; and (b) appoint the associate servicing the owner under the listing to the owner for the same purpose.

(3) Broker may notify Client that Broker will make no appointments as described under this Paragraph 8A and, in such an event, the associate servicing the parties will act solely as Broker's intermediary representative, who may facilitate the transaction but will not render opinions or advice during negotiations to either party.

☐ B. **No Intermediary Status:** Client does not wish to be shown or acquire any of Broker's listings.

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Information About Brokerage Services

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

TYPES OF REAL ESTATE LICENSE HOLDERS:

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

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

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

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

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

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

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

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

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INTERMEDIARY RELATIONSHIP NOTICE

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To: _____ (Seller or Landlord)
and _____ (Prospect)
From: _____ (Broker's Firm)
Re: _____ (Property)
Date: _____

A. Under this notice, "owner" means the seller or landlord of the Property and "prospect" means the above-named prospective buyer or tenant for the Property.



B. Broker's firm represents the owner under a listing agreement and also represents the prospect under a buyer/tenant representation agreement.

C. In the written listing agreement and the written buyer/tenant representation agreement, both the owner and the prospect previously authorized Broker to act as an intermediary if a prospect who Broker represents desires to buy or lease a property that is listed by the Broker. When the prospect makes an offer to purchase or lease the Property, Broker will act in accordance with the authorizations granted in the listing agreement and in the buyer/tenant representation agreement.

D. Broker ☐ will ☐ will not appoint licensed associates to communicate with, carry out instructions of, and provide opinions and advice during negotiations to each party. If Broker makes such appointments, Broker appoints:

_____ to the owner, and
_____ to the prospect.

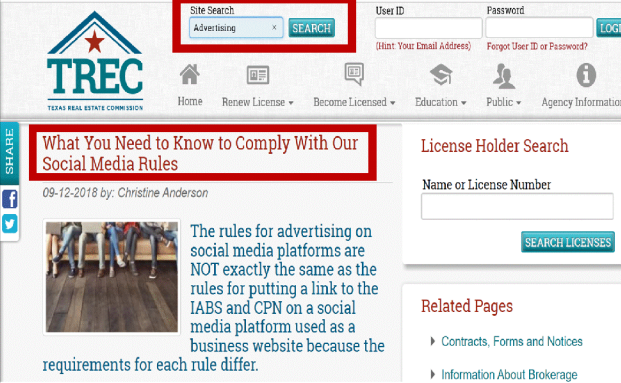
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RESIDENTIAL REAL ESTATE LISTING AGREEMENT RESIDENTIAL BUYER/TENANT REPRESENTATION AGREEMENT	
<p>If Broker acts as an intermediary under Paragraph 8A, Broker and Broker's associates:</p> <ul style="list-style-type: none"> ♦ may not disclose to Client that the seller or landlord will accept a price less than the asking price unless otherwise instructed in a separate writing by the seller or landlord; ♦ may not disclose to the seller or landlord that Client will pay a price greater than the price submitted in a written offer to the seller or landlord unless otherwise instructed in a separate writing by Client; ♦ may not disclose any confidential information or any information a seller or landlord or Client specifically instructs Broker in writing not to disclose unless otherwise instructed in a separate writing by the respective party or required to disclose the information by the Real Estate License Act or a court order or if the information materially relates to the condition of the property; ♦ shall treat all parties to the transaction honestly; and ♦ shall comply with the Real Estate License Act. 	
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<h2>Certificate of Registration</h2>	
 <p>This Certificate issued under the seal of the Copyright Office in accordance with title 17, <i>United States Code</i>, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.</p> <p><i>Marybeth Peters</i> Register of Copyrights, United States of America</p>	
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<p>TREC Rules §535.20(b) - A person is not required to be licensed as a real estate broker or salesperson if all of the following conditions are met.</p> <ol style="list-style-type: none"> 1. The person is engaged in the business of selling goods or services to the public. 2. The person sells goods or services to a real estate license holder who intends to offer the goods or services as an inducement to potential buyers, sellers, landlords or tenants. 3. After selling the goods or services to the real estate license holder, the person refers the person's customers to the real estate license holder. 4. The payment to the person for the goods or services is not contingent upon the consummation of a real estate transaction by the person's customers. 	
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<p>The Fair Use Doctrine</p> <p>Fair use is a legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances such as criticism, comment, news reporting, teaching, scholarship, and research.</p>	
	
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<h2>Fair Use</h2> 	
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Closing LLCs – So what's the takeaway?

1. Get the Certificate of Formation for the LLC
2. Have a proper LLC Operating Agreement
3. Open a bank account in the name of the LLC
4. Have sale proceeds paid to the LLC



EXCEPT for the following (If None, Insert "None" Below:)

5. We understand that Title Company is relying on the truthfulness of the statements made in this affidavit to provide the area and boundary coverage and upon the evidence of the existing real property survey of the Property. This Affidavit is not made for the benefit of any other parties and this Affidavit does not constitute a warranty or guarantee of the location of improvements.
6. We understand that we have no liability to Title Company that will issue the policy(ies) should the information in this Affidavit be incorrect other than information that we personally know to be incorrect and which we do not disclose to the Title Company.

SWORN AND SUBSCRIBED this _____ day of _____, 20_____.

Notary Public

(TXR 1907) 02-01-2010

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**T-47 RESIDENTIAL REAL PROPERTY AFFIDAVIT
(MAY BE MODIFIED AS APPROPRIATE FOR COMMERCIAL TRANSACTIONS)**

Date: _____ GF No. _____
 Name of Affiant(s): _____
 Address of Affiant: _____
 Description of Property: _____
 County _____, Texas

Before me, the undersigned notary for the State of _____, personally appeared Affiant(s) who after by me being sworn, stated:

1. We are the owners of the Property. (Or state other basis for knowledge by Affiant(s) of the Property, such as lease, management, neighbor, etc. For example, "Affiant is the manager of the Property for the record title owners.")
2. We are familiar with the property and the improvements located on the Property.
3. We are closing a transaction requiring title insurance and the proposed insured owner or lender has requested area and boundary coverage in the title insurance policy(ies) to be issued in this transaction. We understand that the Title Company may make exceptions to the coverage of the title insurance as Title Company may deem appropriate. We understand that the owner of the property, if the current transaction is a sale, may request a similar amendment to the area and boundary coverage in the Owner's Policy of Title Insurance upon payment of the promulgated premium.

FIRPTA Best Practices**RESIDENTIAL REAL ESTATE LISTING AGREEMENT
EXCLUSIVE RIGHT TO SELL**

- I. If Seller is a "foreign person" as defined by federal law, a buyer may be required to withhold certain amounts from the sales proceeds and deliver the same to the Internal Revenue Service to comply with applicable tax law. A "foreign person" is a: (1) nonresident alien individual; (2) foreign corporation that has not made an election under section 897(i) of the Internal Revenue Code to be treated as a domestic corporation; or (3) foreign partnership, trust, or estate. The definition does not include a resident alien individual. Seller notifies Broker that Seller ☐ is ☐ is not a "foreign person" as defined by federal law. If Seller is unsure whether Seller qualifies as a "foreign person" under federal law, Broker advises Seller to consult a tax professional or an attorney.

4. To the best of our actual knowledge and belief, since _____ there have been no:
 - a. construction projects such as new structures, additional buildings, rooms, garages, swimming pools or other permanent improvements or fixtures;
 - b. changes in the location of boundary fences or boundary walls;
 - c. construction projects on immediately adjoining property(ies) which encroach on the Property;
 - d. conveyances, replattings, easement grants and/or easement dedications (such as a utility line) by any party affecting the Property.

EXCEPT for the following (If None, Insert "None" Below:)

- Here's some information about purchasing real estate in the United States from a foreign owner.
- People from all over the world invest in US real estate.
- If you're buying property from a foreign owner, here are some things you need to know.
- The Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) may apply to your purchase.
- FIRPTA is a tax law that imposes U.S. income tax on foreign persons selling U.S. real estate.
- Under FIRPTA, if you buy U.S. real estate from a foreign person, you may be required to withhold 15% of the amount realized from the sale.

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- The amount realized is normally the purchase price.
- The withholding is how we collect U.S. tax owed by foreign sellers.
- If the law applies, then within 20 days of the sale, you are required to file Form 8288 with the IRS.
- You (the buyer) also submit 15% of the sales price.
- If you do not withhold the required amount and file the form on time, penalties do apply.
- FIRPTA does not apply if you are buying a principal residence for \$300,000 or less.
- To learn more visit www.irs.gov and type FIRPTA into the search field.
- You can get a copy of Form 8288 on the IRS site.

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TREC Rules - §535.148 Receiving an Undisclosed Commission or Rebate

(c) (NIB) A license holder may not enter into a contract or agreement with a service provider to a transaction in which the license holder represents one or both of the parties if, pursuant to the contract or agreement:

1. the license holder provides services for or on behalf of the service provider; and
2. the contract or agreement prohibits the license holder from offering similar services for or on behalf of a competing service provider.

what's the
opposite of
excluding?

permit, include, sanction,
welcome, choose, ratify, allow,
add, keep, open

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- A **Foreign Person** is a nonresident alien individual, **foreign** corporation, partnership, trust, or estate.
- It does not include a resident alien individual.



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TREC Rules - §535.148 Receiving an Undisclosed Commission or Rebate

(b) (NIB) If a party the license holder does not represent agrees to pay a service provider in the transaction, the license holder must also obtain the consent of that party to accept a fee, commission or rebate from the service provider. As used in this section, the term "service provider" does not include a person acting in the capacity of a real estate broker or sales agent.



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