

**Presents:**  
**3 Hours of Continuing Education**

**Contracts:**  
**The Intermediary**  
**Provisions**

**Houston Association of Realtors® - TREC Provider #2**  
**Lloyd Hampton Real Estate Education - TREC Provider #9844**

## THE INTERMEDIARY PROVISIONS OF TREC AND TAR FORMS

The definition:

Intermediary is when a broker or brokerage firm is representing both the seller and buyer or the landlord and tenant in the same transaction. For the purposes of our discussion and to keep things simple we will use the terms “seller” and “buyer”, but you can substitute the terms “landlord” and “tenant”. Intermediary is the same in either type of transaction.

A little background on the sources of law:

To understand intermediary fully we must first understand a little about law. Law comes to us from a number of different sources. There are four primary sources of law.

1. Constitutional law – whether the U.S. Constitution or the various state constitutions.
2. Statutory law – written law passed by legislatures on either the federal or state level.
3. Administrative law – rules issued by entities such as the EPA (federal) or TREC (state).
4. Common law – coming to us from custom or more likely court cases (precedents).

The dual agency days:

Prior to 1995 the intermediary method of representing both parties did not exist in Texas law. Prior to 1995 we used a method called “dual agency”. The phrase “dual agency” was never mentioned in the Texas Real Estate License Act or in Texas Real Estate Commission Rules. However, Texas courts ruled that we could represent both as dual agents as long as it was done correctly. Sadly, the courts never gave us much detail beyond that vague statement of “doing it correctly”. The only thing that was clear was that we needed the written consent of both parties to act as a dual agent. Beyond that, we were given no clues as to how to correctly perform this function. Over time the picture emerged that if you were never sued when acting as a dual agent, you must have been doing it correctly. But if you got sued for representing both you must have been doing it incorrectly. Rarely was a broker able to successfully defend themselves in court on this issue. Dual agency was not addressed in either statutory or administrative law (constitutional law has never addressed this issue). That left us with only a vague and inconsistent series of court cases in common law.

The new intermediary method:

In 1995 the Texas legislature created a new way to represent both parties called intermediary. It was addressed in both statutory law (the Texas Real Estate License Act) and in administrative law (the rules of the Texas Real Estate Commission). Since 1995 we have had enough lawsuits on intermediary for a clear mosaic to emerge. Intermediary has a number of advantages over the old dual agency.

1. Intermediary is very structured and formalized.
2. The law specifically states that we can act as intermediary.
3. The law tells us exactly how to act as intermediary.
4. Our contracts address it specifically.
5. We see little litigation on this issue & brokers often prevail when they follow the rules.

The 1995-2005 period:

Between 1995 and 2005 brokers were allowed to represent both parties in a transaction as either dual agents or as intermediaries. Both methods were allowed. Then, in 2005, the Texas legislature and TREC reviewed how intermediary had worked for the previous ten years and concluded that by and large, intermediary worked! Consequently, the Texas legislature outlawed dual agency leaving us with intermediary as the only lawful way to represent both parties. That's how we got to where we are today.

Today:

Intermediary has now been around since 1995 and has been the only acceptable method since 2005. It has been noted that intermediary requires a higher degree of training and sophistication on the part of brokers and agents. That is what this course is all about.

Let us begin by reviewing the provisions of the Texas Real Estate License Act pertaining to intermediary.

**TEXAS REAL ESTATE LICENCE ACT**

**Sec. 1101.559. BROKER ACTING AS INTERMEDIARY.**

(a) A broker may act as an intermediary between parties to a real estate transaction if:

- (1) the broker obtains written consent from each party for the broker to act as an intermediary in the transaction; and
- (2) the written consent of the parties states the source of any expected compensation to the broker.

(b) A written listing agreement to represent a seller or landlord or a written agreement to represent a buyer or tenant that authorizes a broker to act as an intermediary in a real estate transaction is sufficient to establish written consent of the party to the transaction if the written agreement specifies in conspicuous bold or underlined print the conduct that is prohibited under Section [1101.651](#)(d).

(c) An intermediary shall act fairly and impartially. Appointment by a broker acting as an intermediary of an associated license holder under Section [1101.560](#) to communicate with, carry out the instructions of, and provide opinions and advice to the parties to whom that associated license holder is appointed is a fair and impartial act.

**Sec. 1101.560. ASSOCIATED LICENSE HOLDER ACTING AS INTERMEDIARY.**

(a) A broker who complies with the written consent requirements of Section [1101.559](#) may appoint:

- (1) a license holder associated with the broker to communicate with and carry out instructions of one party to a real estate transaction; and
- (2) another license holder associated with the broker to communicate with and carry out instructions of any other party to the transaction.

(b) A license holder may be appointed under this section only if:

- (1) the written consent of the parties under Section [1101.559](#) authorizes the broker to make the appointment; and
- (2) the broker provides written notice of the appointment to all parties involved in the real estate transaction.

(c) A license holder appointed under this section may provide opinions and advice during negotiations to the party to whom the license holder is appointed.

**Sec. 1101.561. DUTIES OF INTERMEDIARY PREVAIL.**

(a) The duties of a license holder acting as an intermediary under this subchapter supersede the duties of a license holder established under any other law, including common law.

(b) A broker must agree to act as an intermediary under this subchapter if the broker agrees to represent in a transaction:

- (1) a buyer or tenant; and
- (2) a seller or landlord.

**Sec. 1101.651. CERTAIN PRACTICES PROHIBITED.**

(d) A broker and any broker or sales agent appointed under Section [1101.560](#) who acts as an intermediary under Subchapter L may not:

- (1) disclose to the buyer or tenant 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;
- (2) disclose to the seller or landlord that the buyer or tenant 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 the buyer or tenant;
- (3) disclose any confidential information or any information a party specifically instructs the broker or sales agent in writing not to disclose, unless:
  - (A) the broker or sales agent is otherwise instructed in a separate writing by the respective party;
  - (B) the broker or sales agent is required to disclose the information by this chapter or a court order; or
  - (C) the information materially relates to the condition of the property;
- (4) treat a party to a transaction dishonestly; or
- (5) violate this chapter.



# 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 or subagent by the buyer or buyer's agent.

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

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

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

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

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

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

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

_____	_____	_____	_____
Licensed Broker /Broker Firm Name or Primary Assumed Business Name	License No.	Email	Phone

_____	_____	_____	_____
Designated Broker of Firm	License No.	Email	Phone

_____	_____	_____	_____
Licensed Supervisor of Sales Agent/ Associate	License No.	Email	Phone

_____	_____	_____	_____
Sales Agent/Associate's Name	License No.	Email	Phone

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

\_\_\_\_\_  
Date



# RESIDENTIAL REAL ESTATE LISTING AGREEMENT EXCLUSIVE RIGHT TO SELL

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**1. PARTIES:** The parties to this agreement (this Listing) are:

Seller: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email/Fax: \_\_\_\_\_ Email/Fax: \_\_\_\_\_

Broker: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email/Fax: \_\_\_\_\_ Email/Fax: \_\_\_\_\_

Seller appoints Broker as Seller’s sole and exclusive real estate agent and grants to Broker the exclusive right to sell the Property.

**2. PROPERTY:** “Property” means the land, improvements, and accessories described below, except for any described exclusions.

A. Land: Lot \_\_\_\_\_, Block \_\_\_\_\_, \_\_\_\_\_  
\_\_\_\_\_ Addition, City of \_\_\_\_\_,  
in \_\_\_\_\_ County, Texas known as \_\_\_\_\_  
\_\_\_\_\_ (address/zip code),  
or as described on attached exhibit. *(If Property is a condominium, attach Condominium Addendum.)*

B. Improvements: The house, garage and all other fixtures and improvements attached to the above-described real property, including without limitation, the following **permanently installed and built-in items**, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas, mounts and brackets for televisions and speakers, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property attached to the above-described real property.

C. Accessories: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above-ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, security systems that are not fixtures, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and accessories. “Controls” includes Seller’s transferable rights to the (i) software and applications used to access and control improvements or accessories, and (ii) hardware used solely to control improvements or accessories.

D. Exclusions: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession: \_\_\_\_\_



- (2) authorize other brokers, their associates, inspectors, appraisers, and contractors to access the Property at reasonable times; and
- (3) duplicate keys to facilitate convenient and efficient showings of the Property.

B. Scheduling Companies: Broker may engage the following companies to schedule appointments and to authorize others to access the Property: \_\_\_\_\_.

C. Keybox: **A keybox is a locked container placed on the Property that holds a key to the Property. A keybox makes it more convenient for brokers, their associates, inspectors, appraisers, and contractors to show, inspect, or repair the Property. The keybox is opened by a special combination, key, or programmed device so that authorized persons may enter the Property, even in Seller’s absence. Using a keybox will probably increase the number of showings, but involves risks (for example, unauthorized entry, theft, property damage, or personal injury). Neither the Association of REALTORS® nor MLS requires the use of a keybox.**

- (1) Broker  is  is not authorized to place a keybox on the Property.
- (2) If a tenant occupies the Property at any time during this Listing, Seller will furnish Broker a written statement (for example, TXR No. 1411), signed by all tenants, authorizing the use of a keybox or Broker may remove the keybox from the Property.

D. Liability and Indemnification: When authorizing access to the Property, Broker, other brokers, their associates, any keybox provider, or any scheduling company are not responsible for personal injury or property loss to Seller or any other person. Seller assumes all risk of any loss, damage, or injury. **Except for a loss caused by Broker, Seller will indemnify and hold Broker harmless from any claim for personal injury, property damage, or other loss.**

8. **COOPERATION WITH OTHER BROKERS**: Broker will allow other brokers to show the Property to prospective buyers. Broker will offer to pay the other broker a fee as described below if the other broker procures a buyer that purchases the Property.

A. MLS Participants: If the other broker is a participant in the MLS in which this Listing is filed, Broker will offer to pay the other broker:

- (1) if the other broker represents the buyer: \_\_\_\_\_% of the sales price or \$\_\_\_\_\_; and
- (2) if the other broker is a subagent: \_\_\_\_\_% of the sales price or \$\_\_\_\_\_.

B. Non-MLS Brokers: If the other broker is not a participant in the MLS in which this Listing is filed, Broker will offer to pay the other broker:

- (1) if the other broker represents the buyer: \_\_\_\_\_% of the sales price or \$\_\_\_\_\_; and
- (2) if the other broker is a subagent: \_\_\_\_\_% of the sales price or \$\_\_\_\_\_.

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.

**Notice: If Broker acts as an intermediary under Paragraph 9A, Broker and Broker's associates:**

- ♦ may not disclose to the prospective buyer that Seller will accept a price less than the asking price unless otherwise instructed in a separate writing by Seller;
- ♦ may not disclose to Seller that the prospective buyer will pay a price greater than the price submitted in a written offer to Seller unless otherwise instructed in a separate writing by the prospective buyer;
- ♦ may not disclose any confidential information or any information Seller or the prospective buyer 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;
- ♦ may not treat a party to the transaction dishonestly; and
- ♦ may not violate the Real Estate License Act.

**10. CONFIDENTIAL INFORMATION:** During this Listing or after it ends, Broker may not knowingly disclose information obtained in confidence from Seller except as authorized by Seller or required by law. Broker may not disclose to Seller any confidential information regarding any other person Broker represents or previously represented except as required by law.

**11. BROKER'S AUTHORITY:**

- A. Broker will use reasonable efforts and act diligently to market the Property for sale, procure a buyer, and negotiate the sale of the Property.
- B. If box 6A(1) is checked, Broker is authorized to display this Listing on the Internet without limitation unless one of the following is checked:
  - (1) Seller does not want this Listing to be displayed on the Internet.
  - (2) Seller does not want the address of the Property to be displayed on the Internet.

Notice: Seller understands and acknowledges that, if box 11B(1) is checked, consumers who conduct searches for listings on the Internet will not see information about this Listing in response to their search.

C. Broker is authorized to market the Property with the following financing options:

- |   |  |
|---|--|
| <input type="checkbox"/> (1) Conventional | <input type="checkbox"/> (5) Texas Veterans Land Program |
| <input type="checkbox"/> (2) VA           | <input type="checkbox"/> (6) Owner Financing             |
| <input type="checkbox"/> (3) FHA          | <input type="checkbox"/> (7) Other                       |
| <input type="checkbox"/> (4) Cash         |  |



# RESIDENTIAL BUYER/TENANT REPRESENTATION AGREEMENT

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**1. PARTIES:** The parties to this agreement are:

Client: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email/Fax: \_\_\_\_\_ Email /Fax: \_\_\_\_\_

Broker: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email/Fax: \_\_\_\_\_ Email/Fax: \_\_\_\_\_

**2. APPOINTMENT:** Client grants to Broker the exclusive right to act as Client's real estate agent for the purpose of acquiring property in the market area.

**3. DEFINITIONS:**

- A. "Acquire" means to purchase or lease.
- B. "Closing" in a sale transaction means the date legal title to a property is conveyed to a purchaser of property under a contract to buy. "Closing" in a lease transaction means the date a landlord and tenant enter into a binding lease of a property.
- C. "Market area" means that area in the State of Texas within the perimeter boundaries of the following areas: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.
- D. "Property" means any interest in real estate including but not limited to properties listed in a multiple listing service or other listing services, properties for sale by owners, and properties for sale by builders.

**4. TERM:** This agreement commences on \_\_\_\_\_ and ends at 11:59 p.m. on \_\_\_\_\_.

**5. BROKER'S OBLIGATIONS:** Broker will: (a) use Broker's best efforts to assist Client in acquiring property in the market area; (b) assist Client in negotiating the acquisition of property in the market area; and (c) comply with other provisions of this agreement.

**6. CLIENT'S OBLIGATIONS:** Client will: (a) work exclusively through Broker in acquiring property in the market area and negotiate the acquisition of property in the market area only through Broker; (b) inform other brokers, salespersons, sellers, and landlords with whom Client may have contact that Broker exclusively represents Client for the purpose of acquiring property in the market area and refer all such persons to Broker; and (c) comply with other provisions of this agreement.

**7. REPRESENTATIONS:**

- A. Each person signing this agreement represents that the person has the legal capacity and authority to bind the respective party to this agreement.
- B. Client represents that Client is not now a party to another buyer or tenant representation agreement with another broker for the acquisition of property in the market area
- C. Client represents that all information relating to Client’s ability to acquire property in the market area Client gives to Broker is true and correct.
- D. Name any employer, relocation company, or other entity that will provide benefits to Client when acquiring property in the market area: \_\_\_\_\_.
- E. Broker is not authorized to execute any document in the name of or on behalf of Client concerning the Property.

**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.

**Notice: If Broker acts as an intermediary under Paragraph 8A, Broker and Broker’s associates:**

- ◆ 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.

**9. COMPETING CLIENTS:** Client acknowledges that Broker may represent other prospective buyers or tenants who may seek to acquire properties that may be of interest to Client. Client agrees that Broker may, during the term of this agreement and after it ends, represent such other prospects, show the other prospects the same properties that Broker shows to Client, and act as a real estate broker for such other prospects in negotiating the acquisition of properties that Client may seek to acquire.



# 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.
- E. By acknowledging receipt of this notice, the undersigned parties reaffirm their consent for broker to act as an intermediary.
- F. Additional Information: (Disclose material information related to Broker's relationship to the parties, such as personal relationships or prior or contemplated business relationships.)

The undersigned acknowledge receipt of this notice

\_\_\_\_\_  
Seller or Landlord Date

\_\_\_\_\_  
Prospect Date

\_\_\_\_\_  
Seller or Landlord Date

\_\_\_\_\_  
Prospect Date



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)
ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE)

11-08-2021



NOTICE: Not For Use For Condominium Transactions

1. PARTIES: The parties to this contract are \_\_\_\_\_ (Seller) and \_\_\_\_\_ (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. PROPERTY: The land, improvements and accessories are collectively referred to as the Property (Property).

A. LAND: Lot \_\_\_\_\_ Block \_\_\_\_\_, \_\_\_\_\_ Addition, City of \_\_\_\_\_, County of \_\_\_\_\_, Texas, known as \_\_\_\_\_ (address/zip code), or as described on attached exhibit.

B. IMPROVEMENTS: The house, garage and all other fixtures and improvements attached to the above-described real property, including without limitation, the following permanently installed and built-in items, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas, mounts and brackets for televisions and speakers, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property attached to the above described real property.

C. ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, security systems that are not fixtures, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and accessories. "Controls" includes Seller's transferable rights to the (i) software and applications used to access and control improvements or accessories, and (ii) hardware used solely to control improvements or accessories.

D. EXCLUSIONS: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession: \_\_\_\_\_

E. RESERVATIONS: Any reservation for oil, gas, or other minerals, water, timber, or other interests is made in accordance with an attached addendum.

3. SALES PRICE:

A. Cash portion of Sales Price payable by Buyer at closing .....\$ \_\_\_\_\_

B. Sum of all financing described in the attached: [ ] Third Party Financing Addendum, [ ] Loan Assumption Addendum, [ ] Seller Financing Addendum .....\$ \_\_\_\_\_

C. Sales Price (Sum of A and B) .....\$ \_\_\_\_\_

4. LEASES: Except as disclosed in this contract, Seller is not aware of any leases affecting the Property. After the Effective Date, Seller may not, without Buyer's written consent, create a new lease, amend any existing lease, or convey any interest in the Property. (Check all applicable boxes)

[ ] A. RESIDENTIAL LEASES: The Property is subject to one or more residential leases and the Addendum Regarding Residential Leases is attached to this contract.

[ ] B. FIXTURE LEASES: Fixtures on the Property are subject to one or more fixture leases (for example, solar panels, propane tanks, water softener, security system) and the Addendum Regarding Fixture Leases is attached to this contract.

[ ] C. NATURAL RESOURCE LEASES: "Natural Resource Lease" means an existing oil and gas, mineral, water, wind, or other natural resource lease affecting the Property to which Seller is a party.

[ ] (1) Seller has delivered to Buyer a copy of all the Natural Resource Leases.

[ ] (2) Seller has not delivered to Buyer a copy of all the Natural Resource Leases. Seller shall provide to Buyer a copy of all the Natural Resource Leases within 3 days after the Effective Date. Buyer may terminate the contract within \_\_\_\_\_ days after the date the Buyer receives all the Natural Resource Leases and the earnest money shall be refunded to Buyer.

**BROKER INFORMATION**  
 (Print name(s) only. Do not sign)

Other Broker Firm \_\_\_\_\_ License No. \_\_\_\_\_

represents  Buyer only as Buyer's agent  
 Seller as Listing Broker's subagent

Associate's Name \_\_\_\_\_ License No. \_\_\_\_\_

Team Name \_\_\_\_\_

Associate's Email Address \_\_\_\_\_ Phone \_\_\_\_\_

Licensed Supervisor of Associate \_\_\_\_\_ License No. \_\_\_\_\_

Other Broker's Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Listing Broker Firm \_\_\_\_\_ License No. \_\_\_\_\_

represents  Seller and Buyer as an intermediary  
 Seller only as Seller's agent

Listing Associate's Name \_\_\_\_\_ License No. \_\_\_\_\_

Team Name \_\_\_\_\_

Listing Associate's Email Address \_\_\_\_\_ Phone \_\_\_\_\_

Licensed Supervisor of Listing Associate \_\_\_\_\_ License No. \_\_\_\_\_

Listing Broker's Office Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Selling Associate's Name \_\_\_\_\_ License No. \_\_\_\_\_

Team Name \_\_\_\_\_

Selling Associate's Email Address \_\_\_\_\_ Phone \_\_\_\_\_

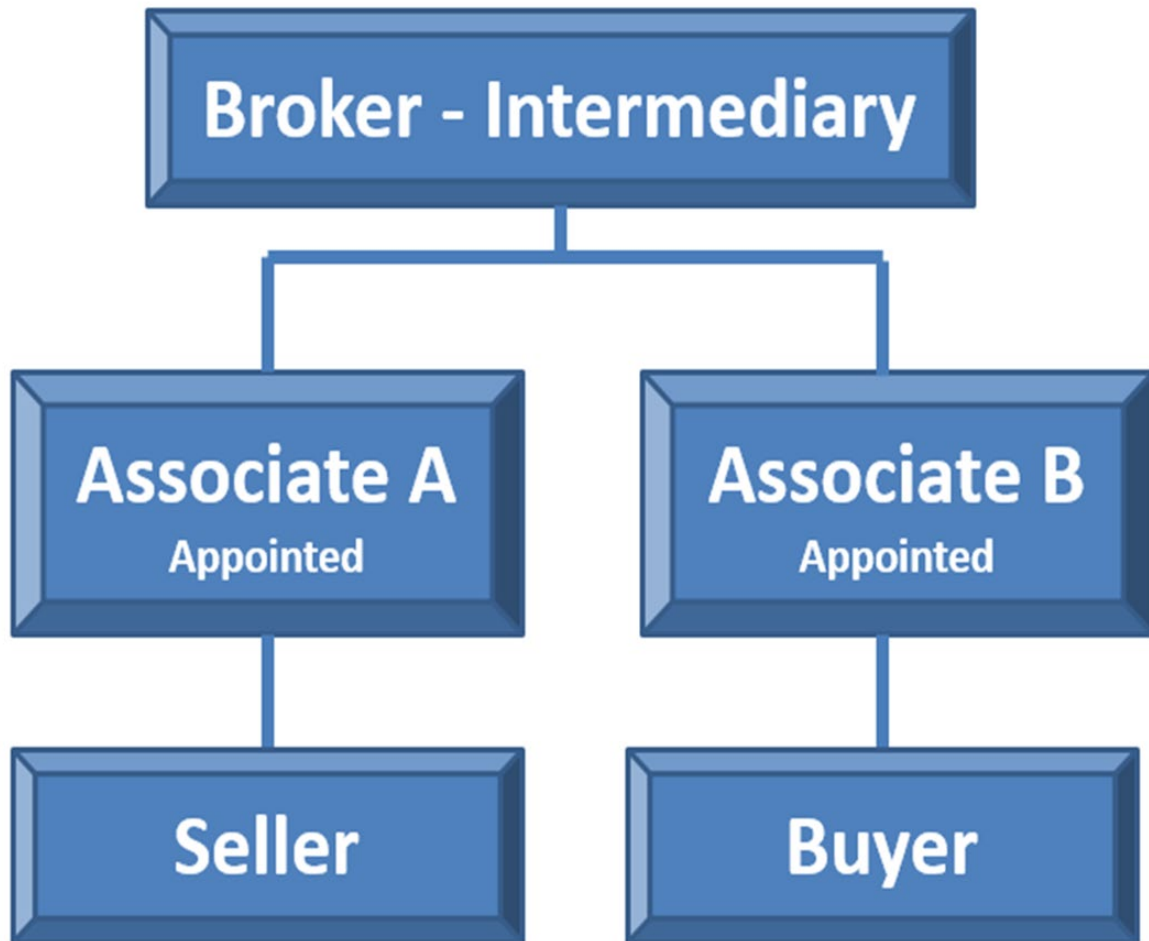
Licensed Supervisor of Selling Associate \_\_\_\_\_ License No. \_\_\_\_\_

Selling Associate's Office Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Disclosure: Pursuant to a previous, separate agreement (such as a MLS offer of compensation or other agreement between brokers), Listing Broker has agreed to pay Other Broker a fee (\_\_\_\_\_). This disclosure is for informational purposes and does not change the previous agreement between brokers to pay or share a commission.

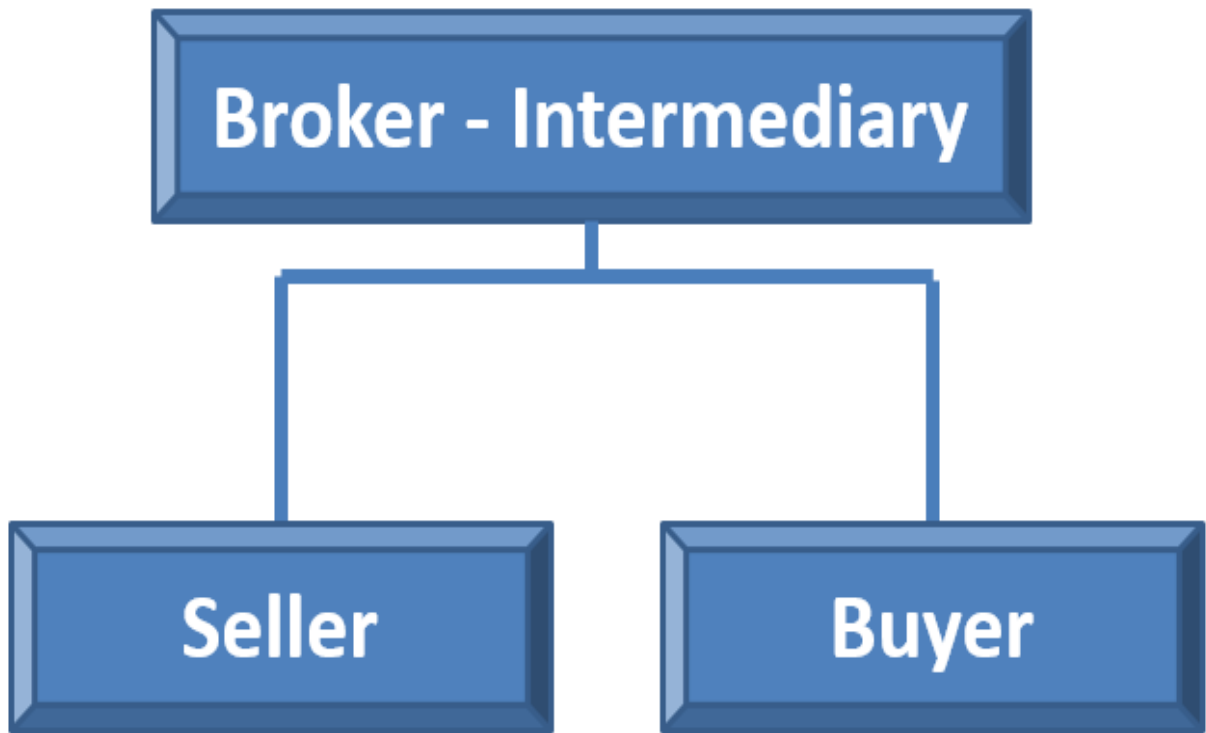
# Classic Intermediary With Appointments



Notes:

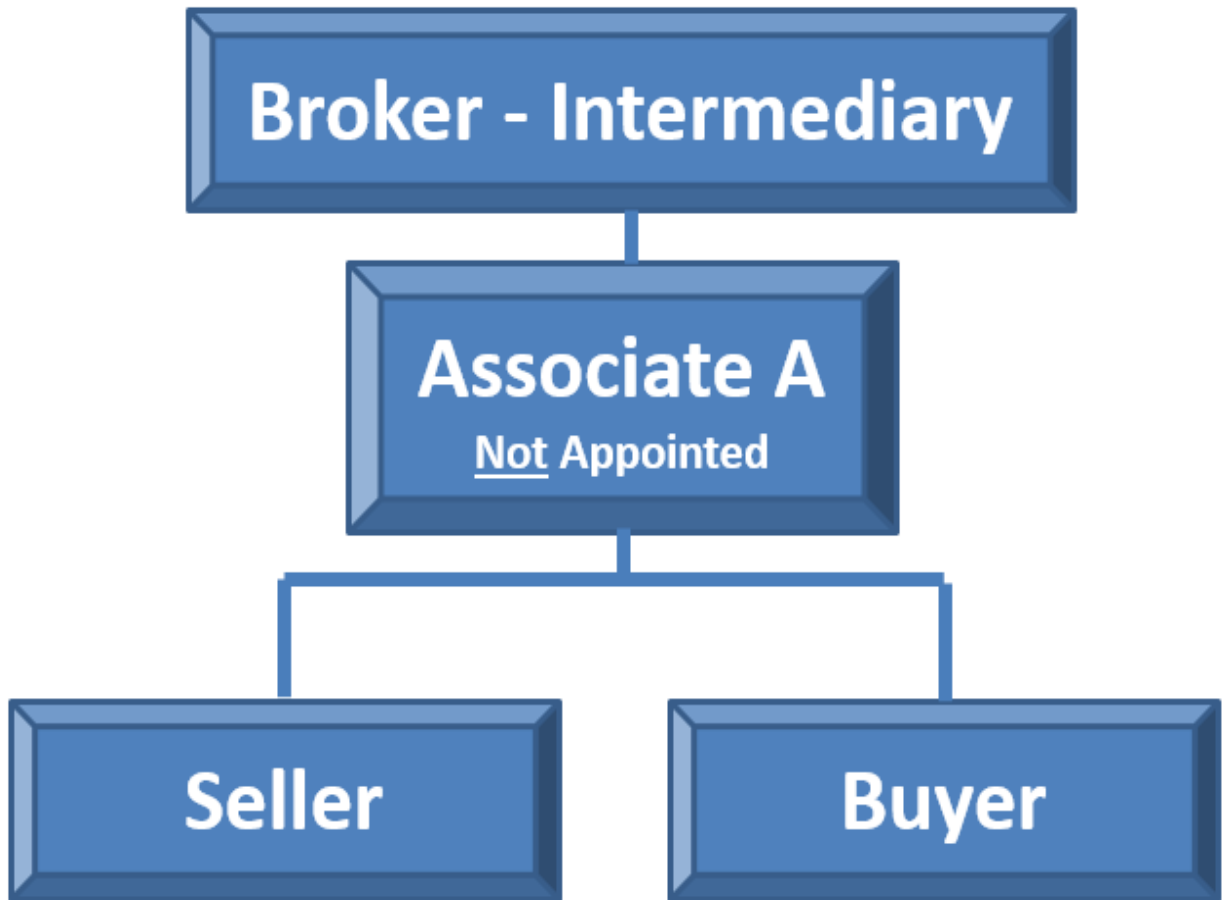


# Intermediary With No Agents And No Appointments



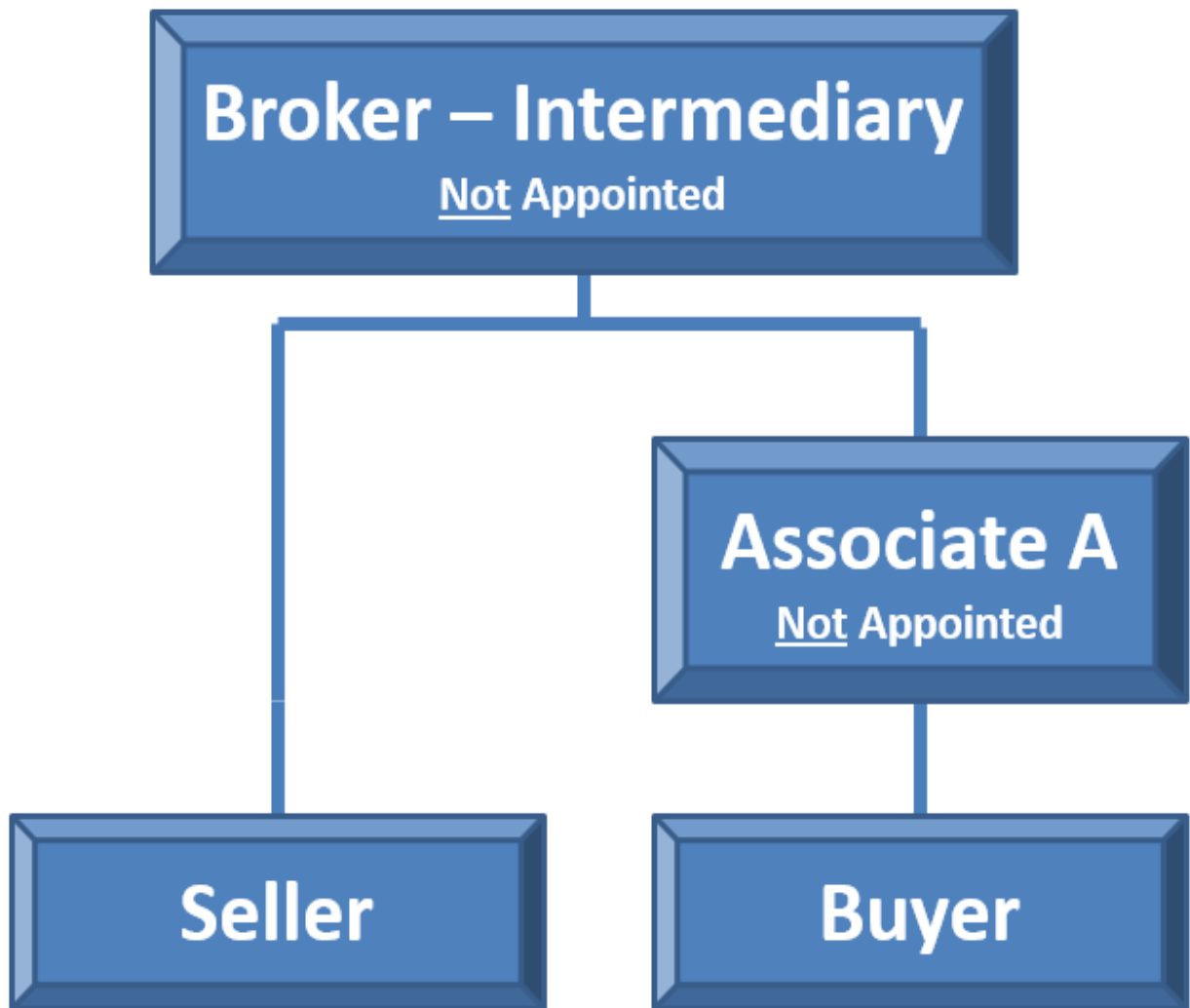
Notes:

# Intermediary With One Agent But No Appointments



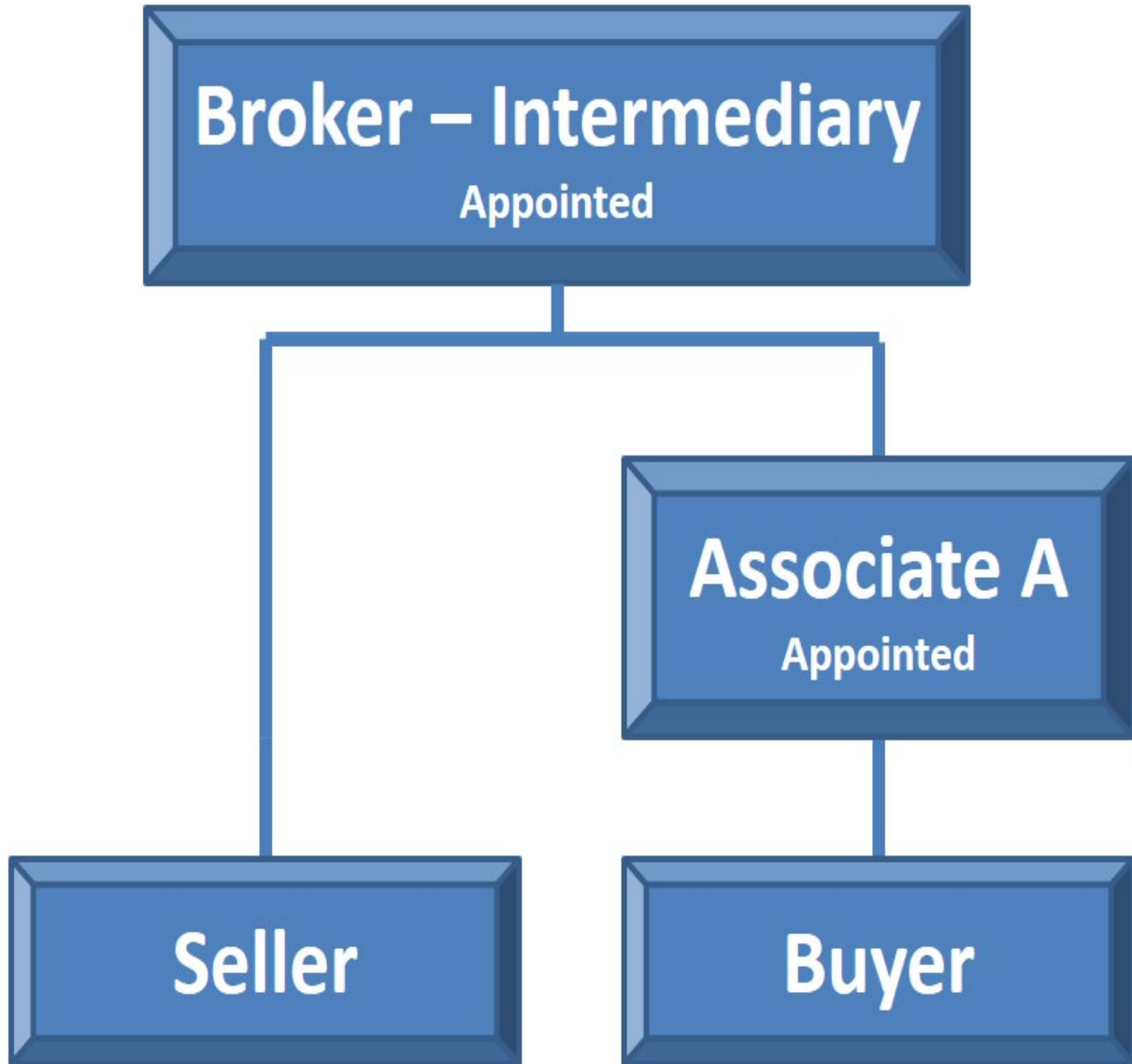
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# Intermediary With One Agent But No Appointments



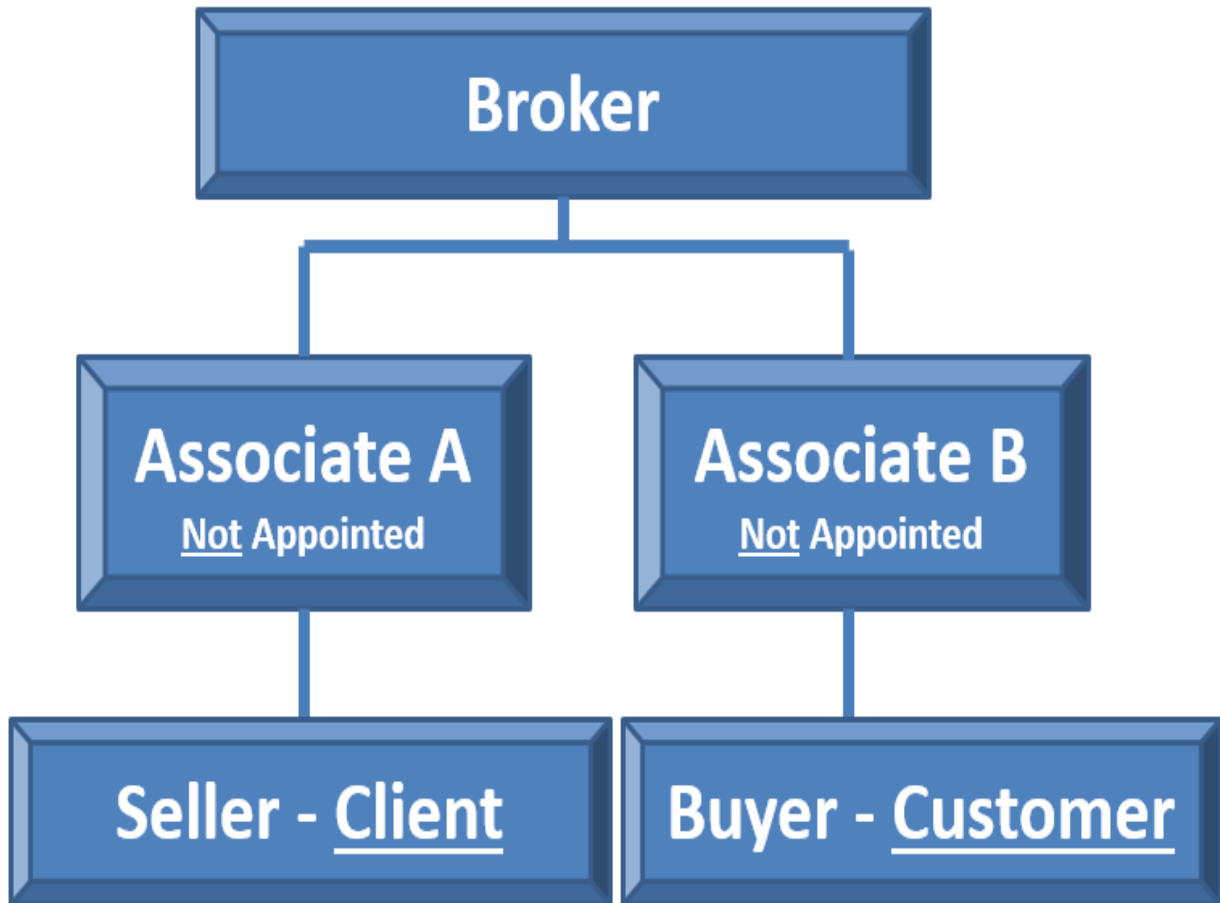
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# What Is NOT Allowed



Notes:

# In-house But Not Intermediary



Notes:

## **Texas Association of REALTORS® - FAQs**

- 1) **May a broker act as a dual agent?**
- 2) **As a listing agent, I hold open houses. If a prospective buyer at an open house wants to purchase the property I listed, can I represent that buyer?**
- 3) **How is a typical intermediary relationship created?**
- 4) **What are the two ways an intermediary relationship can exist?**
- 5) **What are the duties and obligations of an intermediary?**
- 6) **What is the difference between an associated license holder who is appointed to work with a party and an associated license holder who has not been appointed to work with one party?**
- 7) **What are the differences between the duties owed to a seller or buyer by the intermediary broker and the duties owed to those same parties by the associated license holder whom the intermediary appoints to a party?**
- 8) **Is an intermediary an agent?**
- 9) **If a broker lists a property and has also been working with a prospective buyer under a written representation agreement, does the broker have to act as intermediary if the buyer wants to make an offer on the listed property?**
- 10) **Is a broker who represents only the buyer in a transaction an intermediary?**
- 11) **Can associated license holders act as intermediaries?**
- 12) **Can a broker who is a solo practitioner act as an intermediary?**
- 13) **As the broker for my firm, can I appoint myself to represent one of the parties in an intermediary situation?**
- 14) **May more than one associated license holder be appointed by the intermediary to work with the same party?**
- 15) **May the intermediary appoint the same associated license holder to work with both parties in a transaction?**
- 16) **May an intermediary appoint a subagent in another firm to work with one of the parties?**

- 17) Can the intermediary delegate to another license holder the authority to appoint license holders associated with the intermediary?
- 18) If a buyer or seller initially consents to the broker acting as intermediary at the time the buyer or seller signed a representation agreement, must that party consent again to the broker acting as intermediary in a specific transaction?
- 19) What is the Intermediary Relationship Notice used for?
- 20) When must the intermediary appoint the associated license holders associated to work with the parties?
- 21) Must each party's identity be revealed to the other party before an intermediary transaction can occur?
- 22) Who decides whether a broker will act as an intermediary—the broker or the parties?
- 23) Our company policy requires all buyers and sellers to agree to the intermediary practice before commencing to work with them. Does the law permit a listing agreement to specify this practice?
- 24) How can the intermediary broker advise the seller or the buyer on things such as the value of the property, the amount of any escrow deposits, or interest rates?

### **1) May a broker act as a dual agent?**

Section 1101.561 of the Real Estate License Act provides that if the broker will represent both the buyer and the seller in the transaction, the broker must act as an intermediary. One may not agree to act as a dual agent and comply with the Real Estate License Act.

### **2) As a listing agent, I hold open houses. If a prospective buyer at an open house wants to purchase the property I listed, can I represent that buyer?**

Your broker may represent the buyer if your broker has chosen to offer intermediary services. You and your broker must take a few steps to comply with the requirements of the Texas Real Estate License Act (TRELA) and to ensure all parties understand the situation.

You must provide the buyer with the *Information About Brokerage Services* (IABS 1-0, TXR 2501) form upon first substantive dialogue, which in this case is when the buyer approaches you about representation. You must also disclose—verbally or in writing—that your broker is representing the seller.

If the buyer chooses to have your broker represent him or her, the buyer can enter into a representation agreement with the broker. Written consent that specifies the source of the broker's compensation is required from all parties before a broker can serve as an intermediary. The *Residential Real Estate Listing Agreement, Exclusive Right to Sell* (TXR 1101) and the *Residential Buyer/Tenant Representation Agreement* (TXR 1501) satisfy this requirement.

Next, the broker should notify the buyer and seller of whether the broker will appoint licensed associates to provide advice and opinion to each of the parties by providing the *Intermediary Relationship Notice* (TXR 1409) and having the buyer and seller sign it. The broker would then appoint an associated license holder to the buyer and a different associated licensed holder to the seller. You could be one of the agents appointed. If the broker is not going to make appointments then the broker would be the intermediary and any associated license holders of the intermediary would be required to function as an intermediary, would not be permitted to provide advice or opinion to either of the parties, and would not be allowed to favor one party over the other.

### **3) How is a typical intermediary relationship created?**

At the time of the first substantive dialogue with a seller or a prospective buyer, a license holder must provide the party with a copy of the *Information About Brokerage Services* (TXR-2501, TREC IABS 1-0) as required by The Real Estate License Act (TRELA). The IABS form includes an explanation of the intermediary relationship.

Before a broker may act as intermediary, TRELA requires the broker to obtain written consent from both parties. A written representation agreement between a broker and a seller or buyer will satisfy the consent requirement if the agreement: 1) authorizes the broker to act as an intermediary between the parties; 2) lists the conduct an intermediary is prohibited from performing in conspicuous bold or underlined print; and 3) states who will pay the broker. The agreement must also authorize the broker to appoint associated license holders if the broker intends to make appointments when the intermediary relationship arises. The Texas REALTORS® promulgated listing agreements and buyer/tenant representation agreements



contain language necessary to fully comply with TREL A when creating an intermediary relationship.

When it becomes evident that the buyer represented by the firm wishes to purchase property listed with the firm, the intermediary status comes into play.

#### **4) What are the two ways an intermediary relationship can exist?**

There are two alternatives for the brokerage firm and the parties to consider in an intermediary relationship:

1) If the firm has obtained permission in writing from both parties to be an intermediary and to appoint associated license holders to work with the parties, the intermediary broker may appoint one associated license holder to the seller and a different associated license holder to the buyer. The associated license holders may provide opinions and advice during negotiations to the party to whom the license holder is appointed.

2) If the firm has obtained permission in writing from both parties to be an intermediary but does not appoint different associated license holders to work with the parties, then neither the broker nor any associated license holder may give advice or opinions to the parties. Instead, the broker and all associated license holders must remain neutral and not favor one party over the other.

#### **5) What are the duties and obligations of an intermediary?**

The intermediary is required to treat the parties fairly and honestly and to comply with TREL A. The intermediary is prohibited from favoring one party over the other and may not reveal confidential information obtained from one party without the written instructions of that party, unless disclosure of that information is required by TREL A, court order, or the information materially relates to the condition of the property. The intermediary and any associated license holders appointed by the intermediary are prohibited from disclosing, without written authorization, that the seller will accept a price less than the asking price or that the buyer will pay a price greater than the price submitted in a written offer.

#### **6) What is the difference between an associated license holder who is appointed to work with a party and an associated license holder who has not been appointed to work with one party?**

During negotiations, the associated license holder who is appointed to one party may provide advice and opinions to the party. An associated license holder who has not been appointed must act in the same manner as the intermediary, not giving opinions and advice and not favoring one party over the other.

#### **7) What are the differences between the duties owed to a seller or buyer by the intermediary broker and the duties owed to those same parties by the associated license holder whom the intermediary appoints to a party?**

The intermediary broker is authorized to facilitate a transaction between the parties but may not give advice or opinions to either party in negotiations. An associated license holder who is appointed to a party may provide advice or opinions to that party. Both intermediaries and

associated license holders who are appointed to parties are obligated to treat the parties honestly and are prohibited from revealing confidential information.

**8) Is an intermediary an agent?**

Yes, but the duties and obligations of an intermediary are different than for exclusive, or single, agents.

**9) If a broker lists a property and has also been working with a prospective buyer under a written representation agreement, does the broker have to act as intermediary if the buyer wants to make an offer on the listed property?**

No. The broker could represent one of the parties and work with the other party as a customer rather than a client. For example, the buyer may agree to terminating the buyer representation agreement and the broker will represent the seller and work with the buyer as a customer. When a broker represents the seller only, the seller is the broker's client, and the buyer is a customer. In those instances, the broker is obligated to act in the seller's best interests.

**10) Is a broker who represents only the buyer in a transaction an intermediary?**

No. In the case of a for-sale-by-owner or other seller who is not already represented by a broker, the broker representing the buyer is not considered an intermediary. When a broker represents the buyer only, the buyer is the broker's client, and the seller is a customer. In those instances, the broker is obligated to act in the buyer's best interests. Alternatively, the broker could secure the consent of both parties to act as an intermediary and have the seller sign a representation agreement.

**11) Can associated license holders act as intermediaries?**

Only a broker can contract with the parties to act as an intermediary between them. In that sense, only a broker can be an intermediary. If, however, the broker intermediary does not appoint associated license holders to work with the parties in a transaction, any associated license holders of the intermediary who function in that transaction would be required to act just as the intermediary does, not favoring one party over the other.

**12) Can a broker who is a solo practitioner act as an intermediary?**

Yes. The solo broker may act as an intermediary, but that broker cannot make appointments of associated license holders to each of the parties.

**13) As the broker for my firm, can I appoint myself to represent one of the parties in an intermediary situation?**

No. Appointing yourself, the firm's broker, to represent one party and appointing an associated license holder to represent the other party in an intermediary situation is not considered fair and impartial under TREL.A.

**14) May more than one associated license holder be appointed by the intermediary to work with the same party?**

Yes.

**15) May the intermediary appoint the same associated license holder to work with both parties in a transaction?**

No. The law requires the intermediary to appoint different associated license holders to work with each party.

**16) May an intermediary appoint a subagent in another firm to work with one of the parties?**

No. A subagent in another firm cannot be appointed as one of the intermediary's associated license holders.

**17) Can the intermediary delegate to another license holder the authority to appoint license holders associated with the intermediary?**

Yes. If the intermediary authorizes another associated license holder to make the appointments, that person must not appoint himself or herself, as this would be an improper combination of the different functions of intermediary and associated license holders.

**18) If a buyer or seller initially consents to the broker acting as intermediary at the time the buyer or seller signed a representation agreement, must that party consent again to the broker acting as intermediary in a specific transaction?**

No. A second written consent is not required by TREL, but a written notice of any appointments is required. A broker is not prohibited from obtaining a second consent as a business practice to identify and resolve potential conflicts.

**19) What is the Intermediary Relationship Notice used for?**

The *Intermediary Relationship Notice* (TXR 1409) is used for two purposes:

- 1) It serves as a reaffirmation by the seller and the buyer of the prior consent they both gave in writing to the broker to act as an intermediary in the transaction.
- 2) It is used by the broker to satisfy the requirement to give written notice to all parties of the appointment of associates to each side of the transaction if such appointments are to be made. This form is not a substitute for the initial written consent that both parties gave when they each signed brokerage agreements with the broker. The *Intermediary Relationship Notice* should only be used if the seller and the buyer have given their written consent to the broker to act as an intermediary in the listing and buyer representation agreements. This form may also be used when the broker is acting as an intermediary in a landlord-tenant situation.

**20) When must the intermediary appoint the associated license holders associated to work with the parties?**

This is a judgment call for the intermediary. The intermediary relationship does not exist until the parties who have authorized it are beginning to deal with each other in a proposed real estate transaction; an example would be when the buyer begins to negotiate to purchase the seller's property. Prior to the creation of the intermediary relationship, the broker will typically be acting as an exclusive agent of each party. If appointments are going to be made, they should be made before the buyer begins to receive advice and opinions from an associated

license holder in connection with the property listed with the broker. If the broker appoints the associated license holders at the time the listing agreement and buyer representation agreement are signed, it should be clear that the appointments are effective only when the intermediary relationship arises. It is important to remember that both parties must be notified in writing of both appointments. If, for example, the listing agent is “appointed” at the time the listing is taken, care must be taken to ensure that the buyer is ultimately also given written notice of the appointment. The *Intermediary Relationship Notice* (TXR 1409) can be used for this purpose. When a buyer client begins to show interest in a property listed with the firm and both parties have authorized the intermediary relationship, the seller must be notified in writing as to which associate has been appointed to work with the buyer.

**21) Must each party’s identity be revealed to the other party before an intermediary transaction can occur?**

Yes. If the intermediary makes appointments, the law provides that the appointments are made by giving written notice to both parties. To give notice, the intermediary must identify the party and the associated license holder(s) appointed to that party. The *Intermediary Relationship Notice* (TXR 1409) can be used for this purpose. The law does not require notice if no appointments are made.

**22) Who decides whether a broker will act as an intermediary—the broker or the parties?**

Both. Initially, the broker makes a decision in determining the policy of the firm. If the broker does not wish to act as an intermediary, nothing requires the broker to do so. If the broker’s policy is to offer services as an intermediary, both parties must authorize the broker in writing before the broker may act as an intermediary or appoint license holders to work with each of the parties.

**23) Our company policy requires all buyers and sellers to agree to the intermediary practice before commencing to work with them. Does the law permit a listing agreement to specify this practice?**

Yes.

**24) How can the intermediary broker advise the seller or the buyer on things such as the value of the property, the amount of any escrow deposits, or interest rates?**

When the listing agreement or buyer representation agreement has come into existence but no intermediary status yet exists, the broker may advise the parties generally on these matters. Once the intermediary status has been created, the intermediary broker may not express opinions or give advice during negotiations. When asked questions by the client, the intermediary broker may supply information about matters that do not constitute an opinion or advice. For example, the intermediary could tell the buyer what the prevailing interest rate is without expressing an opinion or giving advice. These same rules apply to an associated license holder acting as an intermediary without appointments made by the intermediary broker. If appointments have been made, the associated license holder who has been appointed to a party may provide opinions and advice during negotiations to that party.