

A yellow background with several light-colored wooden blocks arranged to form the outline of a house. Two rectangular blocks are stacked in the top-left corner. Two long blocks form the roofline, meeting at a peak. Two vertical blocks form the front pillars. The text and logo are centered within this house shape.

# Legal Update II

## Student Manual



Edition 11  
2024-2025

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# Foreword

This legal update curriculum was developed by the Texas Real Estate Commission (TREC) and the Texas Real Estate Research Center at Texas A&M University (the Center) with the assistance of a content writing group using information from publications, presentations, and general research.

The information is believed to be reliable, but it cannot be guaranteed for any particular individual or situation. Laws and rules discussed in the textbook may have been excerpted, summarized, or abbreviated. For a complete understanding and discussion, consult a full version of any pertinent law. Information in this textbook can change periodically. The authors and instructors are not engaged in rendering legal, accounting, or other professional advice. Always seek the services of a professional with suitable expertise.

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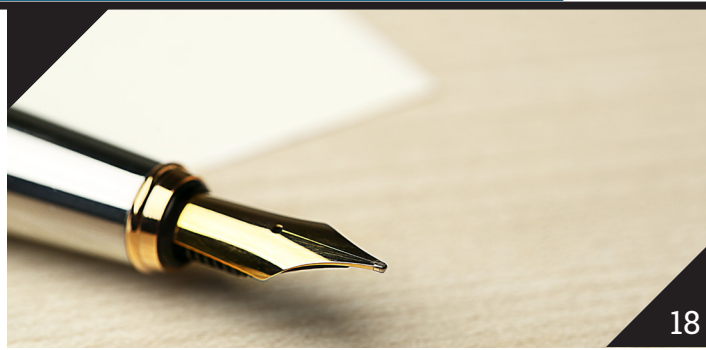
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## Chapter 1 Agency



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### Learning Objectives

After this chapter, you will be able to

- ✓ Define the three Canons of Professional Ethics and Canons under Chapter 531 of the TREC rules.
- ✓ Explain how types of agency relationships are created in Texas.
- ✓ Summarize how license holder-to-license holder communications about commissions can be a violation of antitrust laws.

# Chapter 531 Canons of Professional Ethics and Conduct: An Overview

## Section 531.2, Fidelity

A license holder, while acting as an agent for another, is a fiduciary. Special obligations are imposed when such fiduciary relationships are created. They demand that the duty of a license holder is to

- Represent the interests of the clients, with this position clear to all parties in a real estate transaction.
- Treat other parties to a transaction fairly.
- Be faithful and observant to trust placed in the license holder.
- Be scrupulous and meticulous in performing the license holder's functions.
- Place no personal interest above that of the client.

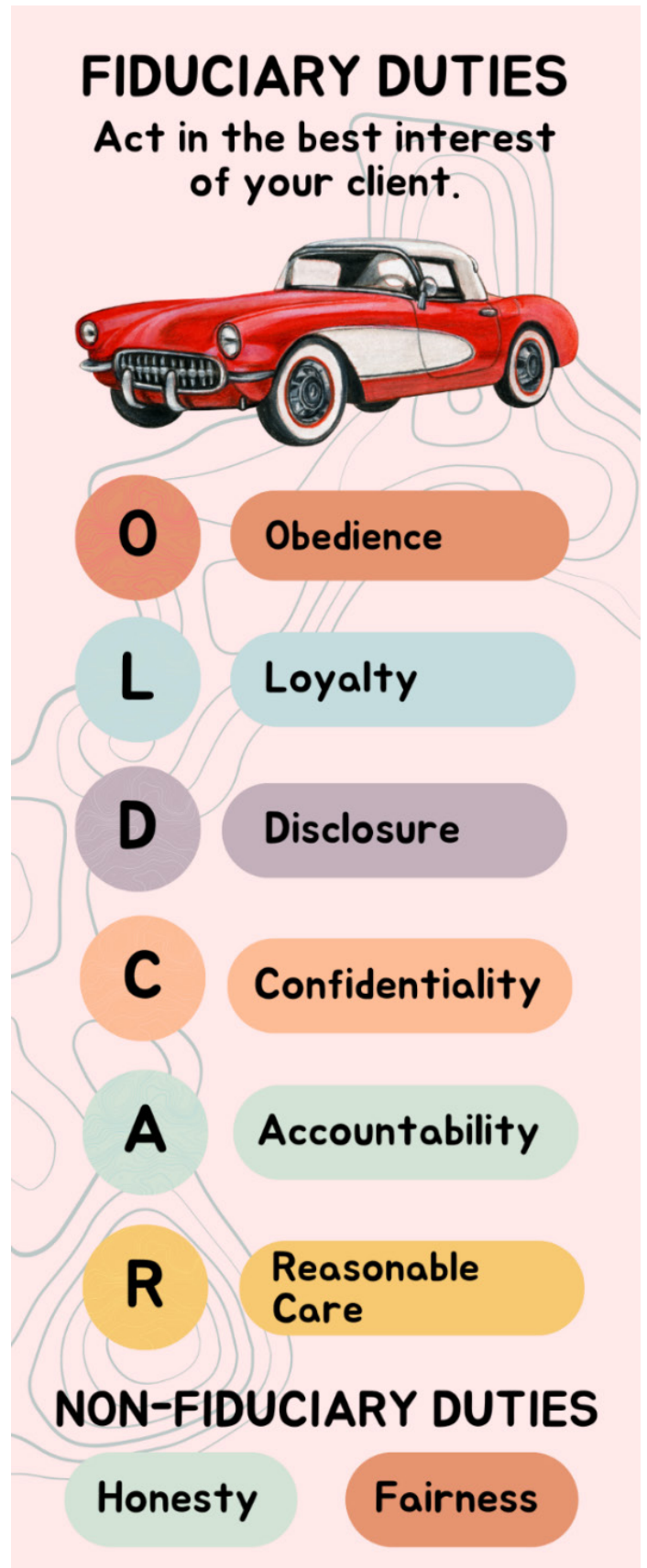
## Section 531.3, Integrity

A license holder has a special obligation to exercise integrity in the discharge of the license holder's responsibilities, including employment of prudence and caution so as to avoid misrepresentation, in any way, by acts of commission or omission.

## Section 531.4, Competency

It is the obligation of a license holder to be knowledgeable and competent as a real estate brokerage practitioner. The license holder must

- Be informed on local market issues and conditions affecting real estate in the geographic area where a license holder provides services to a client
- Be informed on national, state, and local issues and developments in the real estate industry
- Exercise judgment and skill in the performance of brokerage activities
- Be educated in the characteristics involved in the specific type of real estate being brokered for others.







## Activity

Now that we have reviewed fidelity, integrity, and competency, let's put these principles into action. What follows are exercises that further examine these Canons of Professional Ethics and Conduct.

### Fidelity – Pushy Poppy

*Overheard by a broker while walking down the hall in the office.*

Poppy, a sales agent, is talking to her seller client on the phone.

“Yes, we established the value of your home on Saturday afternoon, when I was there sitting with you at your kitchen table. This offer is the best one yet and you should sign it right now. There is no need to negotiate; this is more than you are asking. You know this is the right thing to do, so go ahead and sign and initial and get that right back to me, so we can move this deal along. I have spent too much time on this already.”



#### Discussion Questions

- What would you do if you were the broker?
- What might you say to Poppy?
- What did Poppy say that she shouldn't have?

#### Notes

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# Integrity – Three Scenarios

Read the following scenarios and answer the discussion questions.

## Scenario 1: A Tale of Time Management

Sales agent Austin had too many tasks and not enough time. As he rushed to wrap up one appointment for a showing at 2 p.m., he came up with an idea he thought would save time. Austin called his best friend Oscar, who works for a ride-hailing company. “If I pay you for the time,” Austin said, “Would you take my phone to unlock a lockbox, take the key out, and hand it to my client who will be at the home at 2 p.m.? Feel free to leave after handing over the key.” Oscar agreed.

Although the seller wasn't at home, her video doorbell alerted her to a man who came to the front door, opened the lockbox, and handed the key to two unknown people who were Austin's clients. His clients used the key

to open the door and walked inside the house. The man who opened the lockbox left after handing over the key. Indoor cameras showed the clients looking around the house, opening doors and kitchen drawers, and generally giving the house the once over. Nothing appeared to be damaged or taken, but the seller felt violated. She called Austin's broker and asked how this could have happened.

### Smile, You're on Screen!

License holders should conduct themselves as if they are always on camera, and not just because of smart home devices or social media apps. License holders are expected to conduct themselves with fidelity, integrity, and competency whether cameras are rolling.



#### Discussion Questions

- **Did Austin act with integrity?**
- **What potential consequences could Austin face?**
- **What should Austin do differently in this scenario?**

#### Notes

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## Scenario 2: A Place for Aunt Alice

Joanne is a broker and does property management. She has family coming to town for a family reunion, including her Aunt Alice, who has cancer. Joanne knows Aunt Alice is trying to avoid hotels and other public places so she doesn't get sick.

As it turns out, Joanne's client Fran is a cancer survivor, and Fran's home is getting some minor repairs before being put back on the market to lease. Joanne figures since Fran's home is not being listed right now and Fran has sympathy for Aunt Alice's condition that it would be OK for Aunt Alice to stay at Fran's house for the family reunion for just two nights.

Fran decides to visit the property to see the repair progress and finds Aunt Alice staying at the house. Fran calls Joanne upset and asking for an explanation.



### Discussion Questions

- **Did Joanne act in the best interest of her client?**
- **Is this a situation that could result in discipline?**
- **What could she have done differently to have avoided this situation?**

### Notes

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## Scenario 3: A Brilliant Marketing Idea or a Massive Mistake?

Mitchell is a sales agent with Apple Tree Real Estate and needs to drum up some leads. Mitchell decides to put one of his for sale signs in his own front yard as a form of advertising his business. Even though he isn't planning to sell his house, there are tons of similar properties—even in the same neighborhood—that someone interested in his house would love. People change their minds about selling their house all the time, so he doesn't see any harm in using his own yard as a marketing tool for a little while.



### Discussion Questions

- **Is this a legitimate way for Mitchell to gain leads?**
- **What potential disciplinary action could Mitchell face?**
- **What should Mitchell do instead?**

### Notes

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## Competency - A Story and a Skit



### Activity

Use role playing by asking or assigning class participants to the roles of the Narrator, Dolly, and Eileen, and then answer the discussion question together.

**Narrator:** Dolly Boyd, a sales agent, grew up in Beaumont. She moved away to Lubbock as soon as she could to attend Texas Tech University. While there, Dolly got her real estate sales agent license and did leasing for Texas Tech students.

Dolly did quite well. When she graduated from Texas Tech in 2014, she moved to Shallowater, Texas, (not far from Lubbock) where she joined her mother-in-law Eileen Boyd at Boyd Properties. She has been very successful in the area selling homes and land.

Recently, Dolly's cousin Loretta Stepp called her because she wants to buy a home in Beaumont and wants Dolly to represent her. Loretta hasn't decided if she wants to buy a resale or a new home.

Dolly really wants to help her cousin but does not know what to do. Although she has been back to Beaumont every year for the holidays, there has been lots of growth since she left Beaumont.

Finally, Dolly decides to talk to Eileen and see what Eileen thinks about Dolly representing someone for a purchase in Beaumont.

Here is what ensued ...

**Dolly:** "Hey Eileen, my cousin, Loretta ... you remember Loretta, don't cha? She was at the wedding when Beau and I got married and she comes to Thanksgiving, too. You've seen her there several times."

**Eileen:** "Yes, I remember Loretta and her long black hair. What's up with her?"

**Dolly:** "Well, she wants to buy a house and wants me to represent her."

**Eileen:** "Oh MY, she is moving to Shallowater? I had no idea she wanted to move up here."

**Dolly:** "No, no, no she wants to buy a house in Beaumont."

**Eileen:** "BEAUMONT?!"

**Dolly:** "Yes, ma'am!"

**Eileen:** "Dolly, we need to talk about this and think this through. Is she wanting a resale or a new home?"

**Dolly:** "She doesn't know yet, but I think it will be a pretty good sale."

**Eileen:** "Dolly, that is an entirely different MLS from what we participate in, how will you gain access to these properties?"

**Dolly:** "Well, I hadn't thought about that. But I can stay with my Mama when I go down there."

**Eileen:** "Dolly, does Loretta have any special requests for a home she might be interested in?"

**Dolly:** "Oh yes, she wants backyard chickens and to have a guest house for me and Beau to stay in when we come down."

**Eileen:** "Where will you research whether that will be allowed in the area? Do you know about their homeowner's associations? And have you ever researched city ordinances, like when you were doing leasing in Lubbock? Did you ever have to figure out if a tenant had a special request, and find out whether that could be done in the apartment complex?"

**Dolly:** "No, I just took them to the apartment people, and they gave them the information

the folks needed, and here, I always have you to ask.”

**Eileen:** “Do parts of Beaumont ever flood, and has that changed since you left there almost 20 years ago?”

**Dolly:** “Well, Loretta should know about flooding.”

**Eileen:** “If we are going to represent someone, we have to know everything we can about the area where we are selling properties. We have to know about flooding, not just the client.”

**Dolly:** “Well, it won’t be ‘we,’ it will be ‘me.’”

**Eileen:** “Dolly, Dolly, Dolly! You know I am responsible for all the brokerage acts you perform that I have authorized. If I let you do this, that will be me authorizing this representation, and I will ultimately be responsible if something goes wrong.”

**Dolly:** “Gee, whiz!”



#### Discussion Questions

- **What should Eileen tell Dolly?**

#### Notes

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# All About Agency Relationships

An agency relationship is a fiduciary relationship between two parties and based on trust. In a fiduciary relationship, license holders have a duty to work in the best interest of their client and above any personal interest—but not above the law.

In Texas, real estate license holders represent parties in a real estate transaction, such as a buyer, seller, landlord, or tenant.

Texas does not have the practice of transactional brokerage nor non-representational brokerage, though some states do.

## Implied Agency



## Express Agency



## How Is an Agency Relationship Created?

The *Information About Brokerage Services* (IABS) form tells consumers that they should create an agency relationship in writing using listing agreements, buyer/tenant agreements, and property management agreements. These are called express agreements. An oral agreement is also an express agreement, so an agency relationship may be created orally.

However, sometimes agency isn't created through an express agreement but is implied because of someone's actions or words. This could occur when a party believes an agent represents her because of what the agent has said or acts an agent has performed for her.



### Activity

Ask or assign class participants to the roles of the Narrator, Patricia, and Carlos, and then answer discussion questions together.

**Narrator:** Carlos is a buyer who called Patricia after seeing her for sale sign in the yard of one of her listings. Patricia and Carlos have had several conversations over the phone and via email about the property. Since Patricia will be holding an open house at the home in the morning, she tells Carlos to come by then and she will show him the property.

**Patricia:** So, what do you think of the home, Carlos? Isn't it everything I told you it would be?

**Carlos:** I love it! Thanks for everything, Patricia! You've been a great help. You've answered all my questions and given me options about what I should do. I don't know what I could've done without you. So, what do I need to do next?

**Patricia:** Let's look at some numbers, you know, comps in the area. I'll get you the disclosures and then we can put our heads together to make an offer that will get your goals met. I'm just about to close up the open house, so why don't we meet back at my office in an hour and get started right away?

**Carlos:** That sounds great! I'll see you in an hour.



## Tips for Agency Relationships

Although not required by law nor promulgated by TREC, many brokerages have representation agreements clients sign that clarify the agency relationship. These agreements are between a broker and a client, not a sales agent and a client.

It may be a good practice for brokers who use these agreements to regularly review and explain them to their sponsored agents and detail how you want the forms completed.

Importantly, a broker cannot sue for a commission unless there is a written agreement signed by the party responsible to pay the commission.

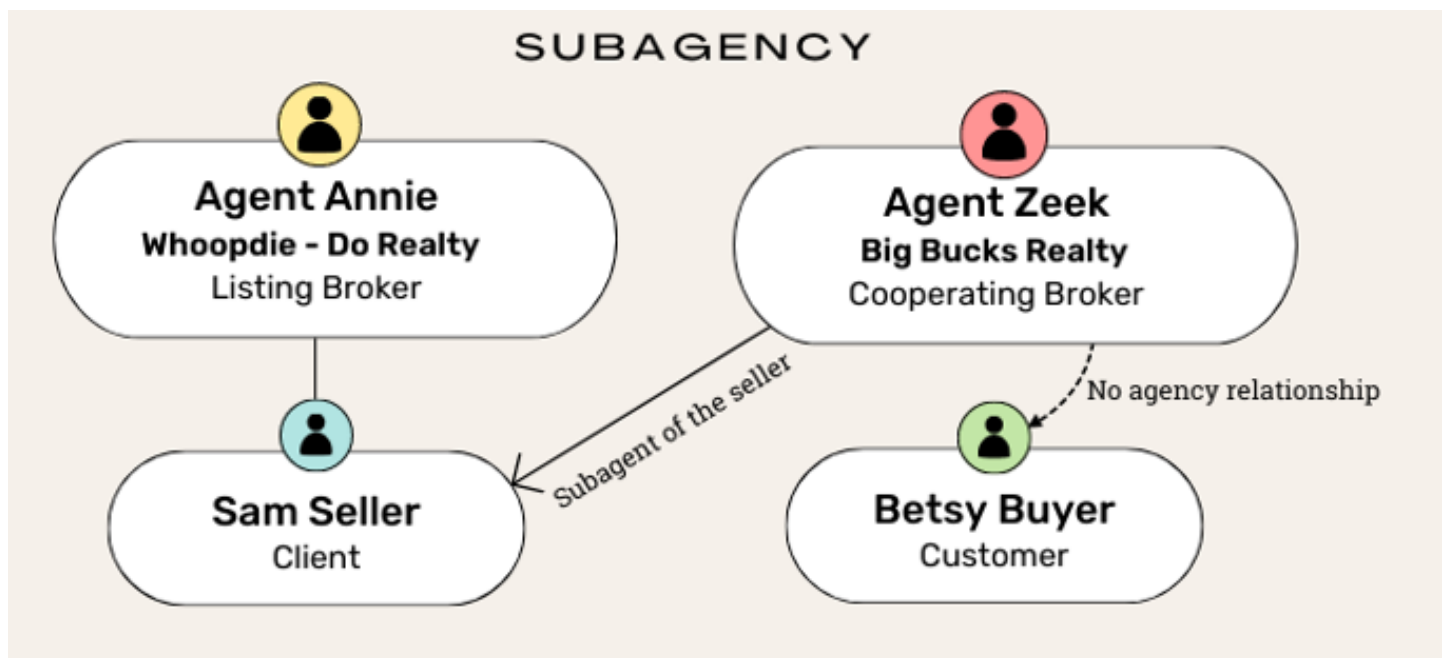
In addition to walking through these types of agreements, brokers can train agents using scripts, role playing, or dialogues to discuss how to create agency with a potential buyer, seller, landlord, or tenant.

## Subagency

A broker who sells the listing of another broker is called the cooperating broker. The cooperating broker typically represents the buyer—hopefully through a written agreement—who is purchasing the listing.

If the cooperating broker hasn't established an agency relationship with the buyer, and without any objection from the listing broker, the cooperating broker would become the subagent of the seller.

This means the cooperating broker, although working with the buyer, would not actually represent the buyer. Instead, the buyer would be a customer. The broker would still need to treat the buyer fairly and honestly, however.



Confusing? Imagine being the buyer in this situation. The cooperating broker needs to clearly disclose the relationship to the buyer.

In a subagency situation, the cooperating broker's loyalty would be to the seller. Aside from what would be protected by law, all information the cooperating broker learned from the buyer would be disclosed to the seller client. In this situation, buyers need to be careful about what information they provide to the cooperating broker about negotiations.

The possibility of subagency may be a conversation a listing agent would have with the seller at the listing table. A broker may have a policy as to whether the broker will allow an agent to act as a subagent or whether the broker will accept an offer of subagency from a cooperating broker.







# Be Cautious About Commission Conversations

The first antitrust legislation, called the Sherman Act, was passed in 1890. It is not named for Sherman, Texas, but for Senator John Sherman, the law's principal author. This law is still relevant to the real estate industry.

So, how is a law from the 1800s relevant in 2024? If a license holder is having lunch with some real estate friends from several brokerages, a conversation about how much you all should "charge" for a listing is **not appropriate**. In fact, it would violate federal antitrust laws. A conversation, email, or text of that nature **should never occur**.

Every time you attend a meeting or a social event with license holders from other companies, you are halfway to the definition of a violation of antitrust. Why? You are a "group of competitors." If you begin to discuss commission rates or why one should not show a license holder or a company's listing, you will have traveled the rest of the way to an antitrust violation.

## Avoid Trouble With Antitrust Laws

Imagine you are at that luncheon with a group of competitors, and someone begins a conversation about commissions their company charges and asks what everyone else's broker requires. Or someone says, "Don't do business with Jean-Luc Picard!" **You need to do something to make it known and remembered that you cannot participate in this conversation.**

Consider slapping the table hard with a big noise, announce the time, tell everyone you are leaving, and this conversation could violate antitrust laws. No one will forget what you did and said.

Does this sound like an exaggeration? It's not. If an antitrust complaint is filed, this will be your defense. It is very likely your friends will be glad that you took action to remind them of antitrust.

## There is No Such Thing as A "Standard Commission"

**There is no such thing as a "standard commission" for all license holders.** TREC does not set nor recommend nor suggest what brokers can charge for their services.

All license holders should remove the words "standard commission" from your language, your marketing, your conversation, and your mind. The compensation a broker receives is an agreement between the broker and the consumer and is no one else's business.

NAR members can learn more here: [nar.realtor/competition-in-real-estate](https://nar.realtor/competition-in-real-estate)

## But My Broker Sets Our Rates?

A broker can set commission rates for their company in their policies and procedures. These policies should be clear and specific with explanations and perhaps, examples.

A broker might have policies on fees based on the sales or lease price, or property type, or any other criteria the broker chooses to use. A broker might set the fee for their brokerage and let the landlord or seller select the cooperative fee for the buyer or tenant's broker.

The policy should cover referral agreements and fees. Training and scripts for how to discuss fees with clients and customers could also be valuable to license holders. There should be clarity in policy about when and if the broker's fee schedule can be changed and how it could be changed. Check with your broker about fees in order to be compliant with your broker's policy.

## Chapter 2

# TREC Disclosures



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### Learning Objectives

After this chapter, you will be able to

- ✓ Understand the specific information contained in each section of the of the IABS.
- ✓ Explain the mechanisms for acceptable delivery and posting of the Consumer Protection Notice.
- ✓ Given a criminal incident, assess if or when a license holder must disclose it as part of their criminal history.
- ✓ Recall the name of the program TREC uses during the license renewal process to check criminal related activity.

## Explaining the *Information About Brokerage Services* Form

A license holder who is having substantive communication with someone about a possible real estate transaction regarding specific property is required to give to that party a written notice that is called *Information About Brokerage Services*. The license holder could

- Hand it to the party
- Attach it to or provide a link (above the signature line) in an email, mention that you are attaching or linking it in the body of the email, and send to the party
- Provide it in the body of the email
- Send it by mail.

Regardless, license holders must give the *Information About Brokerage Services* form (IABS) to the individuals with whom they are having a conversation about real property.

According to Texas Occupations Code Chapter 1101.558 (b-1): At the time of a license holder's first substantive communication with a party relating to a proposed transaction regarding specific real property, the license holder shall provide to the party written notice in at least a 10-point font that:

- (1) describes the ways in which a broker can represent a party to a real estate transaction, including as an intermediary;
- (2) describes the basic duties and obligations a broker has to a party to a real estate transaction that the broker represents; and
- (3) provides the name, license number, and contact information for the license holder and the license holder's supervisor and broker, if applicable.

The IABS is required to be given because it provides valuable information about the duties and obligations that a broker has to a party that the broker represents and describes the ways in which a broker can represent a party in a real estate transaction. It's pretty important information.



### Activity

Imagine a first-time buyer receiving a copy of the IABS from a license holder. Let's look at a scenario.

**Lucia:** It has been really nice talking to you today, Zoe. I am glad I could give you information about the house on Twelfth St. and the other on C Ave. The Texas Real Estate Commission says I have to give you a form called Information About Brokerage Services since we talked about a specific property. My broker needs a copy with your initials on it. I brought two so you could keep one.

**Zoe:** What does it say? Can I read it first?

**Lucia:** Sure! It's just information. You aren't agreeing to anything. By initialing, you are just showing that you received it. I'll need you to initial a copy for our company's records.

**Zoe:** (Hesitantly initials the IABS) OK, here you go ...





# The IABS Section by Section

Let's take a detailed look at the *Information About Brokerage Services* form (TREC IABS 1-0). The IABS is divided into five sections covering

- Real estate license holder types
- Brokers legally required duties
- Representation
- Written agreements and commissions
- Contact information for brokers and sales agents.

Each section gives someone the opportunity to learn what a license holder may do when representing a party in a real estate transaction.

Even before explaining the different types of representation, the IABS states that the broker is the person responsible for all the brokerage activities and that the sales agent works on behalf of the broker.



## 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.

11-2-2015



### 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

Regulated by the Texas Real Estate Commission

Information available at [www.trec.texas.gov](http://www.trec.texas.gov)

IABS 1-0

## 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.

The IABS lists the broker's minimum duties required by law. A license holder giving an IABS to a buyer, seller, landlord, or tenant can explain license they hold and their obligations to clients of the broker. This conversation is a great introduction to the third section of the IABS about ways license holders can represent parties in a real estate transaction.

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

This third section introduces representation and agency agreements. It lists the parties a license holder can represent in a real estate transaction:

- An owner (the seller or landlord)
- A buyer or tenant

The IABS explains that representation begins with an agreement. TREC, through the language in the IABS, recommends that buyers, sellers, landlords, and tenants create agency in writing.

As a practice, a license holder could show the person a copy of the agency agreement while discussing the creation of representation and the use of written agreements. Putting a checkmark in the margin next to the type of agency the license holder would like to create does not suffice as an agency agreement.



Below is the text from the third section of the IABS:

**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:** For a broker to act as an intermediary, the broker must have written consent from all parties to the transaction. The agreement must state who will pay the broker and the broker's obligations as an intermediary.



The IABS also defines an interesting relationship. It's **subagency**, which was covered in Chapter 1.

The broker must represent someone in the transaction. If the broker is working with an unrepresented buyer, then the broker would place the seller's interest first and not the buyer's interest. Here is how The Real Estate License Act (TRELA) describes a **subagent**:

Sec 1101.002(8)a license holder who:

- Represents a principal through cooperation with and the consent of a broker representing the principal; and
- Is not sponsored by or associated with the principal's broker.

Notice the language in the IABS:

**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.

This section of the IABS is advice to the consumer and the broker about having all your agreements in writing which will lessen the possibility of a conflict or misunderstanding.

**LICENSE HOLDER CONTACT INFORMATION**

The final section of the IABS is the License Holder Contact Information. This section must be fully completed before giving the IABS to someone. Each pertinent line must include name, license number, email address, and phone number.

**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	

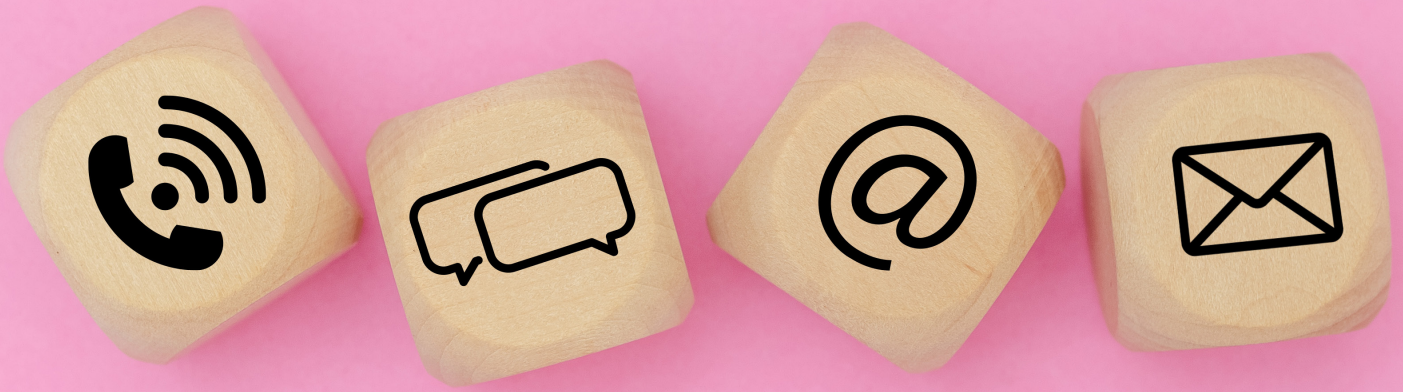
Notice that the IABS states that it does not create any obligation to use the services of the broker.

The *Information About Brokerage Services* form is a well-designed document that, when properly presented, leads to a detailed discussion of the roles and responsibilities of license holders. It facilitates conversation about representation and the benefits of using written representation agreements.

Brokers and team leaders could provide time for agents to practice delivery of the IABS. This could lead to better-informed clients by giving them a greater understanding of the relationship between them and their broker and sales agent.

**Not Sure What Goes Where in the IABS?**

- **Read the IABS carefully.** Often the answers to your questions are clarified in the text of a form.
- **Ask your broker.** Your broker is responsible for ensuring you understand how to appropriately deliver the IABS.
- **Review the 2023-2024 Broker Responsibility Student Manual.** You will find more details there.



## “Help! I Need to Speak to Someone in Charge!”

Section 1101.558 of The Real Estate License Act (TRELA) and TREC Rule 531.20 require brokers and sales agents to post and provide the *Information About Brokerage Services* (IABS) form to protect the consumer. It is intended to provide the consumer with information that both explains the role of license holders and give the consumer relevant contact information. The IABS form is an important tool for the consumer because it provides them with relevant information related to regulated brokerage activity in Texas and what the consumer should expect from a license holder.

Remember, what seems like basic knowledge to you as a license holder on the broker/agent relationship and responsibilities is often new information to the consumer. As such, it is crucial this information is provided in accordance with law and rule.

Importantly, the IABS contains a section at the bottom of the form titled License Holder Contact Information. This section is intended to provide the consumer with the name and contact information of all license holders related to the transaction. Such information is particularly useful to a consumer when he or she needs to get ahold of those ultimately responsible for the brokerage activity at issue.

License holders can use the contact information listed to reach out to the appropriate license holder at issue in the event there is a need. This can be

an important tool to utilize when trying to contact the broker/brokerage, when necessary, on behalf of your client.

Because the broker is ultimately responsible for brokerage activity conducted under the license, brokers must ensure the IABS of all sponsored sales agents are correctly filled out, posted, and communicated in accordance with state law and TREC rule. Failure to do so can result not only in a failed transaction but can also lead to a TREC enforcement action.

TREC takes communication and broker responsibility seriously. Make sure you do, too.

## Unsolicited Advice from Your Mother ... and TREC

Make sure to keep your email address current with TREC so you receive important communications about your license. Plus, you could face disciplinary action if you don't keep your contact information up to date. TREC Rule 535.21 requires license holders to update their contact information with TREC within 10 days of it changing.

*And while you're at it, make sure to eat your vegetables!*







## Explaining the *Consumer Protection Notice*

The *Consumer Protection Notice* (TREC CN 1-5) is a form that TREC promulgates that contains information a consumer should know about the Texas Real Estate Commission. It's divided into sections. TREC requires all license holders to display it in a readily noticeable location in every office the broker has. TREC also requires each license holder to provide a link to the notice on the homepage of websites used to conduct brokerage activities. Here's the rule:

### Section 531.18, Consumer Information

- (a) The Commission adopts by reference the Consumer Protection Notice, TREC No. CN 1-5. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.texas.gov](http://www.trec.texas.gov).
- (b) Each license holder shall provide the notice adopted under subsection (a) by:
- (1) displaying it in a readily noticeable location in each place of business the broker maintains; and
  - (2) providing a link to it in a readily noticeable place on the homepage of each business website, labeled:
    - (A) "Texas Real Estate Commission Consumer Protection Notice", in at least 10 point font; or
    - (B) "TREC Consumer Protection Notice", in at least 12 point font.
- (c) For purposes of this section, business website means a website on the internet that:
- (1) is accessible to the public;
  - (2) contains information about a license holder's real estate brokerage services; and
  - (3) the content of the website is controlled by the license holder.
- (d) For purposes of providing the link required under subsection (b)(2) on a social media platform, the link may be located on:
- (1) the account holder profile; or
  - (2) a separate page or website through a direct link from the social media platform or account holder profile.

TREC Enforcement staff check to see whether license holders are properly providing the IABS and the *Consumer Protection Notice* in every complaint it receives—even if the subject matter of the complaint isn't about the CPN or IABS. That's just one more reason why you should make sure you understand how to comply with these rules.



**Section 1**

**THE TEXAS REAL ESTATE COMMISSION (TREC) REGULATES  
REAL ESTATE BROKERS AND SALES AGENTS, REAL ESTATE INSPECTORS,  
EASEMENT AND RIGHT-OF-WAY AGENTS,  
AND TIMESHARE INTEREST PROVIDERS**

**YOU CAN FIND MORE INFORMATION AND  
CHECK THE STATUS OF A LICENSE HOLDER AT**

**WWW.TREC.TEXAS.GOV**

**Section 2**

**YOU CAN SEND A COMPLAINT AGAINST A LICENSE HOLDER TO TREC**

**A COMPLAINT FORM IS AVAILABLE ON THE TREC WEBSITE**

**Section 3**

**TREC ADMINISTERS THE REAL ESTATE RECOVERY TRUST ACCOUNT WHICH MAY BE  
USED TO SATISFY A CIVIL COURT JUDGMENT AGAINST A BROKER, SALES AGENT, OR  
EASEMENT OR RIGHT-OF-WAY AGENT, IF CERTAIN REQUIREMENTS ARE MET.**

**REAL ESTATE INSPECTORS ARE REQUIRED TO MAINTAIN ERRORS AND OMISSIONS  
INSURANCE TO COVER LOSSES ARISING FROM THE PERFORMANCE OF A REAL ESTATE  
INSPECTION IN A NEGLIGENT OR INCOMPETENT MANNER.**

**PLEASE NOTE: INSPECTORS MAY LIMIT LIABILITY THROUGH PROVISIONS IN THE CONTRACT  
OR INSPECTION AGREEMENT BETWEEN THE INSPECTOR AND THEIR CLIENTS. PLEASE BE  
SURE TO READ ANY CONTRACT OR AGREEMENT CAREFULLY. IF YOU DO NOT UNDERSTAND  
ANY TERMS OR PROVISIONS, CONSULT AN ATTORNEY.**

**Section 4**

**IF YOU HAVE QUESTIONS OR ISSUES ABOUT THE ACTIVITIES OF  
A LICENSE HOLDER, THE COMPLAINT PROCESS, OR THE  
RECOVERY TRUST ACCOUNT, PLEASE VISIT THE WEBSITE OR CONTACT TREC AT**

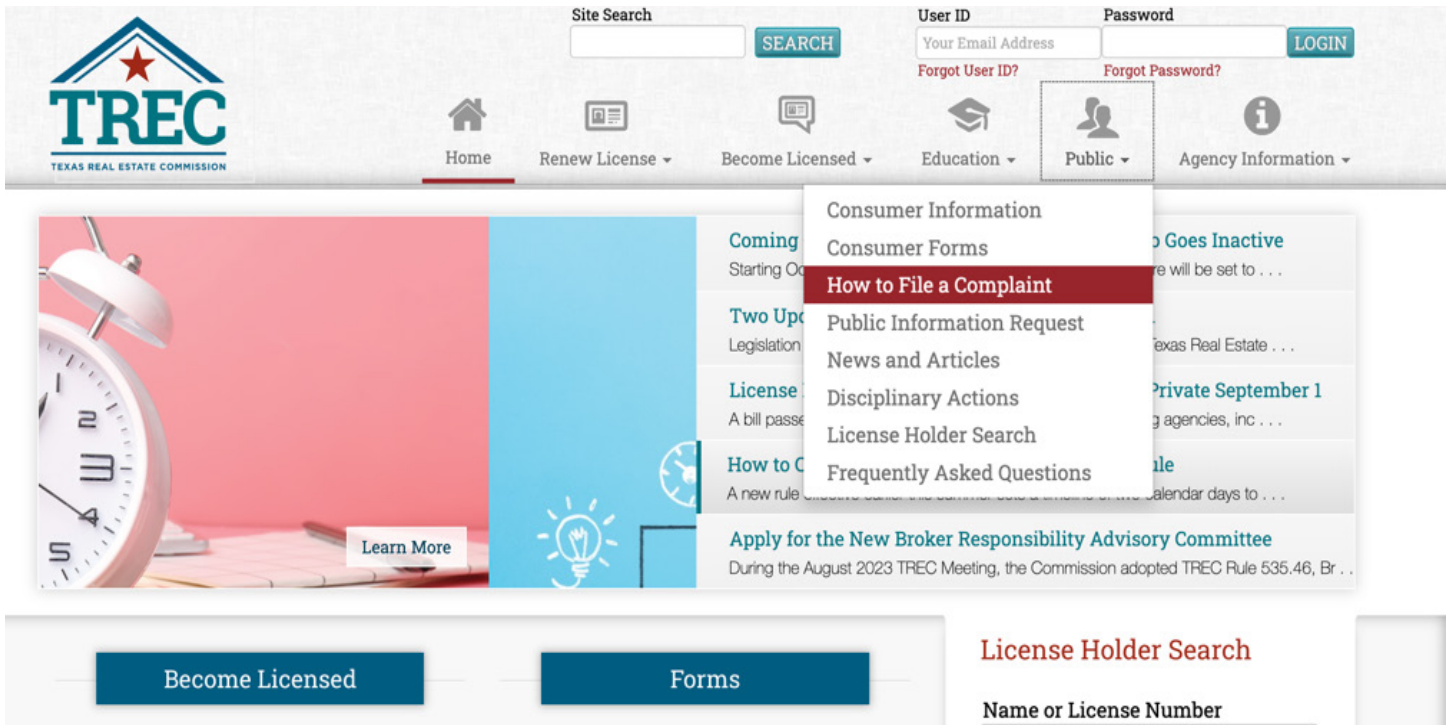


**TEXAS REAL ESTATE COMMISSION**

**P.O. BOX 12188**

**AUSTIN, TEXAS 78711-2188**

**(512) 936-3000**



## Who TREC Regulates

The first part of the *Consumer Protection Notice* lists the professionals TREC regulates. Real estate brokers and sales agents are on the list. Real estate inspectors, easement or right-of-way agents, and timeshare interest providers are also on the list.

## How to File a Complaint

The *Consumer Protection Notice* informs the public how to file a complaint against license holders. It's simple: Go to [trec.texas.gov](http://trec.texas.gov) > *Public* > *How to File a Complaint*. You will find information on who, what, why, when, and how to file a complaint, plus a complaint form to download complete, and return to TREC. The *How to File a Complaint* section includes:

- Who can be subject to a TREC complaint?
- Who can file a complaint?
- How to file a complaint
- Download Complaint Form

TREC complaints and the complaint process will be addressed more in Chapter 4.

## Real Estate Recovery Trust Account

TREC administers a real estate recovery trust account that is used to satisfy a civil

court judgment against a broker, sales agent, or easement or right-of-way agent. There are specific requirements that must be met before a judgment may be satisfied.

The recovery account funds are “funds of last resort” used to pay a judgment when a license holder cannot pay it. The recovery account payment limits are \$125,000 per transaction with a maximum of \$250,000 per license holder for multiple transactions.

The Real Estate Recovery Trust Account and Fund webpage at [trec.texas.gov/public/real-estate-recovery-funds](http://trec.texas.gov/public/real-estate-recovery-funds) has information about the account as well.

Effective January 1, 2024, House Bill 1363 eliminated the real estate inspection recovery fund. This was done in recognition that the statute requires inspectors to carry liability insurance and the fact that the recovery fund has only paid out three claims in the last 10 years.

## TREC's Contact Information

TREC is available and open to the public. The last section of the *Consumer Protection Notice* encourages people to call if they have questions. TREC wants to hear from those who have had issues with how license holders conduct their business and has its contact information on the form and on its website.



## Criminal Disclosure

**Q. Oh no! I got in trouble with the law. What do I do and how will this impact my license?**

**A.** TREC's consumer protection responsibilities include reviewing all criminal history for each person applying for a new license. Additionally, TREC Enforcement staff review the criminal history of all current license holders, even those whose licenses are set to inactive. This review is done to ensure license holders maintain the requisite honesty, trustworthiness, and integrity required by law.

Having a criminal conviction does not automatically mean you lose your license; however, failure to disclose certain criminal convictions is a violation of Chapter 1101. TREC Enforcement staff will pursue such a violation, so it is important that license holders understand when they need to

disclose information to the Commission. The following questions and answers should provide clarification if you find yourself in this situation.

**Q. I was just arrested, what now?**

**A.** If you have just been arrested, charged, or indicted for an offense, there is no requirement to disclose at this time. If you disclose the arrest, charge, or indictment before the criminal matter is final this will not satisfy your disclosure requirement according to The Real Estate License Act (TRELA). You will need to disclose this criminal information once it becomes final as detailed below. TREC does not have authority to proceed with opening an investigation into the criminal offense **until that matter is concluded by the criminal court**. The criminal proceedings could take months or years to complete.

## Q. The criminal case is final. What now?

A. Section 1101.652(a)(1) of TREL A gives the Commission authority to suspend or revoke a license holder who has entered a plea of guilty or *nolo contendere* or has been convicted of a felony or any criminal offense that involves fraud (including misdemeanors). Additionally, under Section 1101.652(a)(7), license holders are required to notify the Commission not later than the 30th day after the final conviction or the entry of the plea of guilty or *nolo contendere*. Notifying the Commission timely is key to avoid further disciplinary action.

Criminal backgrounds are checked as part of the renewal process. This does not excuse a license holder from notifying the Commission timely. If you are placed on community supervision or receive a deferred adjudication for the felony or criminal offense involving fraud, you are still obligated to notify the Commission within 30 days.

If a license holder commits a felony or a criminal offense involving fraud, their license could be subject to suspension or revocation. Depending on the offense, the Commission may probate the suspension or revocation.

## Q. I renewed my license and I forgot to disclose a felony or fraud-based criminal offense, what happens now?

A. All renewals ask: "Have you had any instance of entering a plea of guilty or *nolo contendere* to, have been found guilty of, or been convicted of a felony, regardless of an order granting probation, community supervision, deferred adjudication, or suspending the imposition of sentence that has not previously been reported to the Texas Real Estate Commission?"

If you answer "Yes" to this question you will need to fill out the Background History form. After filling out the Background History form, make sure the judgment for the criminal case is attached to the form. If you incorrectly answer "No" to this question, it could be considered a violation of TREL A and subject you to discipline and administrative penalties. It is a license holder's responsibility to retrieve the criminal documents for TREC

staff to review. If you have previously notified TREC of this felony or fraud offense, you do not need to answer "yes" or fill out the background history form.

## Q. What if I get my criminal offense expunged?

A. Your criminal record might still show up on our background check. The Enforcement Division staff may ask for the expunction order to confirm.

## Q. What happens if I go to prison for my offense?

A The Commission is required by law to revoke the license of a person who goes to prison for a felony offense. The revocation is non-discretionary and retroactive to the date the person went to prison. The person is not entitled to a hearing for these matters.



## What is the RAP BACK Program?

Record of Arrest and Prosecution BACK program (RAP BACK) is an FBI service that allows authorized users to receive notifications of criminal related activity on a person's criminal history. This service allows TREC to better monitor for criminal convictions of license holders. However, it does not satisfy the disclosure requirement of notifying TREC within 30 days after the felony or fraud based criminal case is final.



## Chapter 3 Representing Veterans and Military Service Members



- 32 History of the VA Loan
  - How VA Loans Work
  - VA Loan Basics for Beginners
- 33 11 Benefits of a VA Loan
- 35 Texas Military Snapshot Infographic
- 36 Texas Veteran Land Board Lending Program

### Learning Objectives

After this chapter, you will be able to

- ✓ Understand the requirements of the VA loan program.
- ✓ Describe how VA loans are different than conventional home loans.
- ✓ Identify differences between the VA loan program and the Texas Veteran Land Board loan program.





## The History of the VA Loan

The VA-Guaranteed Home Loan program was created as part of the Servicemen's Readjustment Act of 1944, which was signed into law by President Franklin D. Roosevelt. The purpose of the VA loan program was to help returning World War II veterans purchase homes. The VA loan program provided veterans with favorable loan terms, including no down payment, low interest rates, and no private mortgage insurance.

Initially, the VA loan program was only available to World War II veterans, but it was later expanded to include veterans of the Korean War and the Vietnam War. In the 1990s, Congress expanded the VA loan program to include all veterans who served on active duty, regardless of when they served. Today, the VA loan program remains an important part of the benefits package provided to veterans, and it is administered by the U.S. Department of Veterans Affairs (VA).

Over the years, the VA loan program has helped millions of veterans become homeowners. In addition to providing favorable loan terms, the VA loan program also provides veterans with counseling and assistance to help them manage their finances and avoid foreclosure. The VA loan program is an important part of the government's commitment to helping veterans achieve the American Dream of homeownership.

## How VA Loans Work

VA loans are made by private lenders such as banks, mortgage companies, and credit unions. However, these lenders offer VA loans under guidelines set by the VA. The VA does not directly lend money to borrowers, but it does provide a guarantee to the lender if the borrower defaults on the loan. This guarantee reduces risks for lenders and allows them to offer more favorable terms to borrowers.

To be eligible for a VA loan, borrowers must meet certain requirements, including having served in the U.S. military, being the spouse of a veteran who died while on active duty or as a result of a service-connected disability, or being an active-duty service member. Borrowers must also meet certain credit and income requirements set by the lender.

## VA Loan Basics for Beginners

### Qualifications

Veteran borrowers must meet income qualifications that have been set by the VA. The two qualifications are residual income and debt-to-income ratio.

### Residual Income

Residual income is the amount of discretionary money a veteran has left over each month after paying for fixed expenses. Fixed expenses can include installment and revolving loan payments, childcare costs, and estimated utility costs.



Residual income is based on region and number of dependents.

### Debt-to-Income Ratio

VA loans, like FHA loans, have relaxed lending guidelines. This includes higher debt-to-income ratios (DTI). The DTI for VA financing is a ratio between total monthly debt payments to gross monthly income. The DTI for a VA loan is 41%. This is higher than both conventional and FHA loans but is secondary in importance to residual income in the qualification.

### Funding Fee

VA loans require borrowers to pay a funding fee, which is a one-time fee that helps to offset the cost of the program. The fee is based on the loan amount, the type of loan, and the borrower's military service.

### Appraisal Process

When a VA borrower applies for a home loan, a VA-approved appraiser will assess the value of the property to ensure that it meets the minimum property requirements, including that it is safe, sound, and sanitary, and is worth the amount of the loan.

### Occupancy Requirements

VA loans require borrowers to occupy the home as their primary residence, and the loan cannot be used to purchase a vacation home or investment property.

## 11 Benefits of a VA Loan

**Age is just a number.** Eligible veterans are able to pursue a VA loan no matter their age and can reuse the benefit multiple times.

**100% financing.** VA loans allow eligible borrowers to purchase a home with no down payment as long as the sales price is at or below the home's appraised value.

**Competitive terms.** Borrowers using the VA benefits may receive more competitive terms from private banks, mortgage lenders, and credit unions, and sometimes lower interest rates.

**No PMI or MIP.** For conventional loans, lenders often require private mortgage insurance (PMI) if a borrower puts down less than 20% of the total loan amount as a down payment. PMI is intended to protect the lender if a borrower stops paying on the loan.

The Federal Housing Administration (FHA) requires borrowers to pay to self-insure an FHA loan against future loss through mortgage insurance premiums (MIP).

Unlike these loans, VA loans do not have these requirements, which equals long-term savings for the borrower.

**No minimum credit score.** VA loans have more flexible qualification requirements than traditional loans, which can make it easier for veterans with less-than-perfect credit to qualify for a mortgage. However, most lenders will use a credit score to determine the borrower's interest rate.

**No loan limit.** As of 2020, eligible veterans, service members, and survivors with full entitlement do not have loan limits and the VA guarantees to the lender that if the borrower defaults on a loan that's more than \$144,000, the VA will pay up to 25% of the loan amount.

Borrowers have full entitlement if they meet any of these requirements (at least one of these must be true):

- You've never used your home loan benefit
- You've paid a previous VA loan in full and sold the property (in this case, you'd have your full entitlement restored)
- You've used your home loan benefit but had a foreclosure or short sale and repaid in full.

**Additional termination options.** Federal law requires the "amendatory clause," sometimes referred to as an escape clause, for VA borrowers. Amongst other things, this clause makes it so the buyer is not obligated to purchase the property if the appraised value is less than the amount of the loan.

In Texas, this clause is contained in Paragraph 4 of the *Third Party Financing Addendum*. Because this language is required for VA loans and ties back to the appraised value of a home, license holders cannot use the *Appraisal Contingency Addendum* when the borrower is using a VA loan.



However, under the amendatory clause, a VA buyer can elect to pay more than the appraised value *after* the appraised value is known in accordance with federal guidelines as set out in subsections A-C of Paragraph 4 of the *Third Party Financing Addendum*. In such a case, and with certain stipulations, the buyer could agree to make up the difference between the appraised value and purchase price.

**Fewer closing costs.** Closing costs could be paid by the seller, lender, or any other party.

**Assumability.** According to the VA, if the loan is assumable, anyone can assume it as long as the borrower meets the lender's credit and income requirements. However, there are some important restrictions and requirements that apply to the assumption of a VA loan.

The seller must obtain approval from the VA or the loan servicer before assuming the loan. This ensures the new borrower meets the same eligibility requirements of

the original borrower. In addition, the new borrower must be willing to assume all the obligations of the original borrower, including timely payments.

Finally, the original borrower remains liable for the loan until it is paid in full, or until the VA releases the borrower from liability.

**No early payment penalties.** There are no additional payments required to pay off the loan earlier than originally scheduled.

**Support from the VA.** If a borrower faces hardship, such as unexpected unemployment, the VA will work with the lender to try and keep veterans and their families in their homes.

## The Takeaway

Having a basic understanding of the VA loan history and benefits may be helpful for you in your practice. But remember, your client will need to discuss their personal situation with an expert.

# TEXAS

## MILITARY SNAPSHOT / 2021

Texas military installations play a vital role in strategic national defense and provide significant benefits to the state economy. These bases support local businesses and create jobs in a wide variety of industries.

The U.S. Department of Defense maintains 14 bases throughout

Texas, covering more than 1.4 million acres. Ten of the Comptroller's twelve economic regions include a U.S. military installation.

Military bases in the state support about 235,000 direct jobs and contribute more than \$67.6 billion to Texas' gross domestic product

annually. They support an estimated 622,000 Texas workers in some capacity, contributing about \$42.3 billion in disposable personal income.



**Glenn Hegar**

Texas Comptroller of Public Accounts



### 2021 ESTIMATED CONTRIBUTIONS TO THE TEXAS ECONOMY

**235,184** DIRECT EMPLOYMENT

DIRECT AND INDIRECT EMPLOYMENT

**622,790**

**\$42.3 Billion** DISPOSABLE PERSONAL INCOME

**\$114.2 Billion** OUTPUT

**\$67.6 Billion** GROSS DOMESTIC PRODUCT

#### EMPLOYMENT, OUTPUT AND DISPOSABLE PERSONAL INCOME

INSTALLATION	DIRECT EMPLOYMENT	TOTAL EMPLOYMENT	OUTPUT (IN BILLIONS)	GROSS DOMESTIC PRODUCT (IN BILLIONS)	DISPOSABLE PERSONAL INCOME (IN BILLIONS)
<a href="#">Army Futures Command</a>	833	2,201	\$0.37	\$0.22	\$0.16
<a href="#">Corpus Christi Army Depot</a>	3,191	9,344	\$1.40	\$0.85	\$0.64
<a href="#">Dyess AFB</a>	5,533	16,098	\$3.04	\$1.79	\$1.15
<a href="#">Ellington Field JRB</a>	414	1,203	\$0.22	\$0.13	\$0.09
<a href="#">Fort Bliss</a>	46,971	120,799	\$22.94	\$13.56	\$7.97
<a href="#">Fort Hood</a>	55,374	160,933	\$28.89	\$16.97	\$11.22
<a href="#">Goodfellow AFB</a>	9,690	23,897	\$4.74	\$2.80	\$1.53
<a href="#">Joint Base San Antonio</a>	82,639	211,213	\$39.17	\$23.32	\$14.40
<a href="#">Laughlin AFB</a>	3,290	8,694	\$1.59	\$0.95	\$0.60
<a href="#">NAS Corpus Christi</a>	8,395	19,815	\$3.36	\$2.01	\$1.31
<a href="#">NAS JRB Fort Worth</a>	5,199	15,164	\$2.70	\$1.59	\$1.07
<a href="#">NAS Kingsville</a>	1,647	4,442	\$0.75	\$0.45	\$0.30
<a href="#">Red River Army Depot</a>	3,370	9,059	\$1.34	\$0.81	\$0.62
<a href="#">Sheppard AFB</a>	8,638	19,928	\$3.68	\$2.18	\$1.24
<b>STATEWIDE TOTALS</b>	<b>235,184</b>	<b>622,790</b>	<b>\$114.19</b>	<b>\$67.63</b>	<b>\$42.29</b>

TO SEE MORE DETAILED INFORMATION ON EACH OF THESE INSTALLATIONS, VISIT:

TMPC 2021-2022 Texas Military Preparedness Commission Biennial Report:

[GOV.TEXAS.GOV/ORGANIZATION/MILITARY/REPORTS](http://GOV.TEXAS.GOV/ORGANIZATION/MILITARY/REPORTS)

Comptroller's 2021 Economic Impact, Texas bases:

[COMPTROLLER.TEXAS.GOV/ECONOMY/ECONOMIC-DATA/MILITARY/](http://COMPTROLLER.TEXAS.GOV/ECONOMY/ECONOMIC-DATA/MILITARY/)

Published July 2022

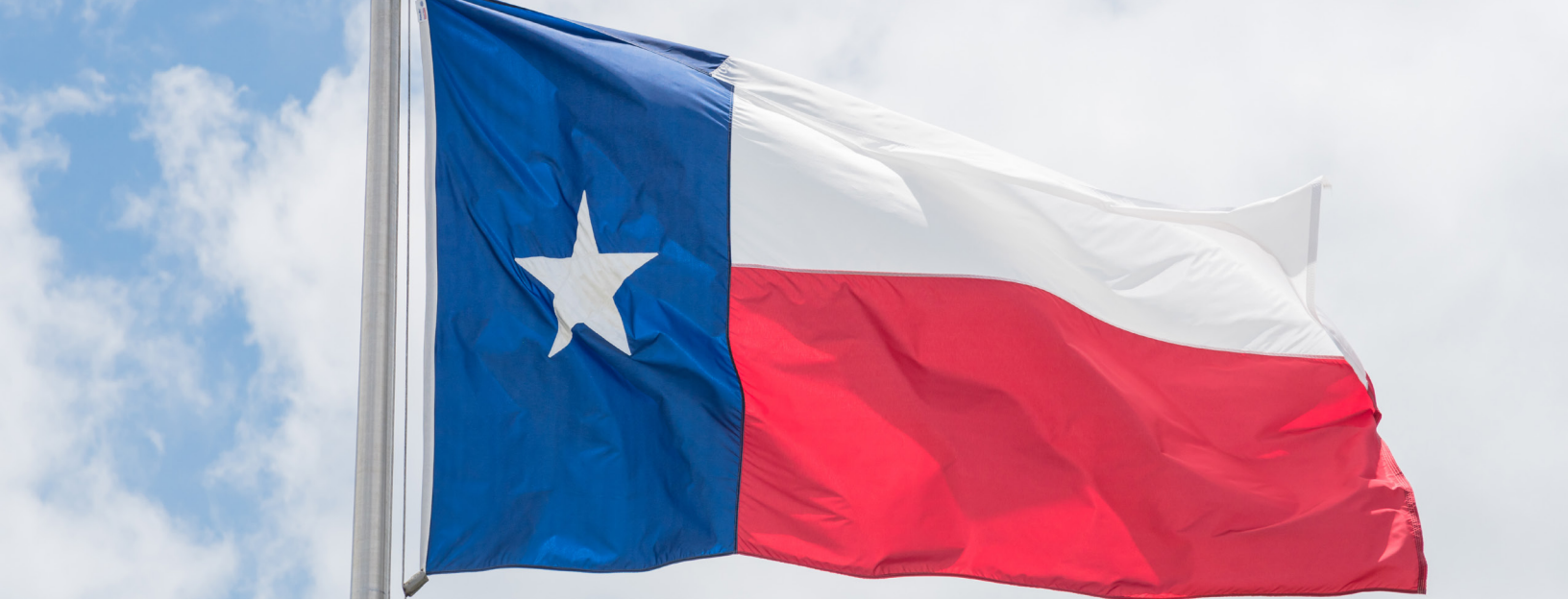
Sources: Texas Military Preparedness Commission; the various U.S. Military bases in Texas; REMI; Texas Comptroller of Public Accounts

Glenn Hegar

Texas Comptroller of Public Accounts

98-986 (7/22)





## Texas Veterans Land Board Lending Program

The Texas Veterans Land Board (TVLB) lending program ([vlb.texas.gov](http://vlb.texas.gov)) is a separate program from the VA loan program. While both programs are designed to help veterans and their families buy homes, there are some key differences between them:

**Eligibility.** To be eligible for a TVLB loan, borrowers must be a Texas resident and a veteran, active-duty military member, or the spouse of a veteran or service member who was killed in action. In contrast, VA loans are available to eligible veterans and active-duty military members across the country.

The TVLB also has eligibility requirements for the property the veteran wishes to purchase. The home must be the primary residence of the veteran or military member. The home must be a single-family attached or detached home, townhome, or condominium. Duplexes or other multi-family must have been constructed less than five years ago prior to the closing date of the loan. New construction must have either Energy Star certification or a HERS score or an Energy Rating Index of 75 or less. The property must remain the veteran's primary residence for at least 3 years. Finally, the veteran must occupy the property within 60 days after closing.

**Loan types.** The TVLB offers two types of loans: the Veterans Housing Assistance Program (VHAP) and the Veterans Land Program (VLP). The VHAP provides loans for the purchase of a home, while the VLP provides loans for the purchase of land to build a home. VA loans, on the other hand,

are specifically designed to help borrowers purchase a home.

The TVLB allows not only the use of a VA loan, but eligible borrowers may also consider and choose to borrow through a conventional loan or an FHA loan. The TVLB does not restrict the veteran from only using a VA loan to finance the purchase. Having loan options may give the veteran better purchasing power in a tight marketplace while giving the veteran choices in determining the best loan terms to choose.

**Interest rates.** TVLB loans typically have lower interest rates than VA loans, making them a more affordable option for some borrowers.

**Fees and costs.** TVLB loans may have lower fees and closing costs than VA loans, which can help borrowers save money.

**Loan limits.** TVLB loans have lower loan limits than VA loans, which means borrowers may not be able to borrow as much as they would with a VA loan.

Overall, both the TVLB and VA loan programs offer valuable benefits to eligible veterans and their families, and borrowers should carefully consider their options and compare the terms and requirements of each program before choosing a loan.

The TVLB is self-funded through the sale of bonds. The bond programs associated with the funding of the loans and the timely repayment of the principal and interest associated with the loans creates a self-funding program, costing no tax dollars.

## Chapter 4

### The Real World: Enforcement, Case Studies, and Commission Priorities



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#### Learning Objectives

After this chapter, you will be able to

- ✓ Paraphrase the TREC complaint process.
- ✓ Identify the top five TREC complaint categories.
- ✓ Recall best practices for brokers to prevent complaints against license holders.
- ✓ Describe TREC's advertising compliance program.



## Who Handles Complaints and Discipline?

The Enforcement Division of the Texas Real Estate Commission protects consumers by enforcing the laws and rules that regulate license holders. The Enforcement Division administers the complaint investigation and disciplinary enforcement programs. Additionally, it administers the background review for all license holders.

The Enforcement Division is comprised of attorneys, legal assistants, investigators, and other administrative staff. In 2023, there were 6,307 cases opened by Enforcement. Complaints filed against brokers and sales agents have steadily increased over the past five years.

## The Complaint Process

Filing a complaint with TREC is the first step in the enforcement process. Anyone can file a complaint against a license holder, even other license holders.

Complaints must be submitted in writing and signed by the complainant. A complainant should hear back from the Enforcement Division within 30 days about whether it will proceed with opening and investigating the allegations in the complaint. If an investigation is opened, each person against whom the complaint is filed receives a copy of the complaint. Every individual subject to a complaint is required to cooperate with the investigation.

Any inquiry from TREC requires a response within 14 days. Failure to cooperate with the investigation will result in disciplinary action against the license holder. A sponsoring broker should be prepared to talk about how they supervise their sponsored sales agent, including providing policies and procedures that address the issues that are alleged in the complaint.

Following the investigation, the information collected during the investigation will be turned over to an Enforcement attorney for review. If the attorney determines that a violation occurred and there is sufficient evidence to support the violation, discipline will be pursued. Disciplinary action can

include formal reprimand, suspension, or revocation of a license, including payment of an administrative penalty. Additionally, depending on the severity of the violation an advisory letter might be issued. An advisory letter is a form of informal discipline that will remain a part of the license holder's disciplinary record. A license holder's past complaint and disciplinary history is taken into consideration and can be used against the license holder in any future complaints.

### TREC Enforcement Did You Know . . . ?

Do you know these facts about TREC Enforcement?

Only 1% of license holders ever have a complaint filed against them.

Typically, 25% - 30% of cases opened for investigation result in discipline.



### TREC Enforcement CANNOT provide legal advice.

Neither the Commission, nor its attorneys, can provide legal advice related to any of the following:

- Specific transactions;
- Property Code questions (such as the Seller's Disclosure Notice);
- Earnest money, contractual performance, or security deposit disputes;
- Disputes between license holders, including commissions, and other work issues;
- Business models or the structures of entities engaged in brokerage;
- Rude, unprofessional, disparaging, or offensive comments on social media UNLESS the comment/action involves discrimination in a real estate transaction.

TREC Enforcement cannot share pending case information to uninvolved parties.

Only the respondent may inquire about pending cases.



TREC publishes all formal disciplinary actions.

Discipline is published on the TREC website and it remains there for 10 years.



TREC Enforcement verifies compliance with the IABS and CPN for every complaint.

Know how to link the IABS and CPN to your websites and business social media accounts.



There are different types of disciplinary actions taken by TREC

Disciplinary action may be formal or informal. An Advisory Letter is informal discipline. Formal discipline includes Agreed Orders or a Notice of Alleged Violation (NOAV).



## Top TREC Complaint Categories

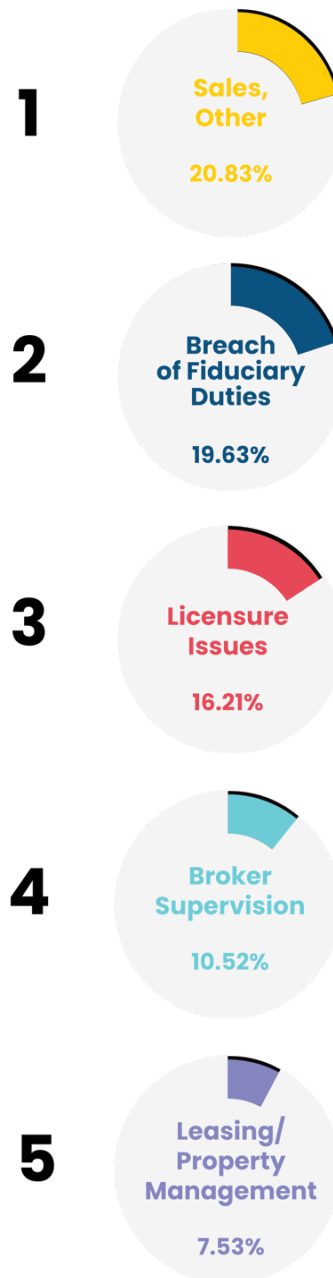
The TREC Enforcement Division compiles data monthly regarding complaints received. The chart below shows the top five complaint categories as of publication. Complaints do not always result in disciplinary action, and this chart does not reflect closed cases.

Here is a brief explanation of each category.

- 1. Sales, Other (unrelated to leasing and property management):**  
Includes negligence, rebates, referrals, earnest money issues, and so forth.
- 2. Breach of Fiduciary Duty:**  
Includes false promises and other fiduciary issues like the topics covered earlier in this course.
- 3. Licensure Issues:** Consists of criminal background checks that uncover criminal offenses, denials based on criminal history, licenses issued on a probationary status, and so forth.
- 4. Broker Supervision:** Remember TREC Rule 535.2, Broker Responsibility? Complaints under this category deal with alleged violations of this rule or other activities related to broker oversight.
- 5. Leasing/Property Management:** Involves issues such as negligence, referrals, misappropriation of money, and so forth.

## TREC Enforcement Top Five Complaint Categories

August 2022 to August 2023



## Common Enforcement Violations

- Failure to cooperate with an investigation
- Negligence or incompetence issues
- Bad faith/misrepresentation
- Unlicensed business entities
- Inactive/expired license holder activity
- Trust fund issues (property management)
- Failure to disclose criminal offenses
- Broker responsibility issues



## Advertising Compliance Program

Many advertising-related complaints can be handled easily, from adding missing brokerage information on for sale signs to registering a team name or DBA after failing to do so to adding missing required links on a license holder's website. Because of these simple remedies, TREC launched the Advertising Compliance Program in 2023 to streamline processing complaints that deal only with advertising violations. The goal of the new program is to promote compliance, not punishment.

### TREC Complaint Form Now Includes Advertising Checkbox

TREC Enforcement staff has modified the complaint form to add a checkbox for advertising complaints. This will allow staff to quickly identify complaints that may be eligible for processing through the Advertising Compliance Program.

To indicate you are filing an advertising complaint, check the "yes" box next to the new field "Does your complaint allege or deal with advertising issues?" on the updated complaint form.

### How TREC Staff Applies the Advertising Compliance Program

#### Step 1: Assess the Complaint

- **If there are allegations beyond advertising**, the complaint will go through the normal complaint investigation process.
- **If the allegations are only about advertising violations**, the complaint will be handled at TREC headquarters versus being assigned to a field investigator.

#### Step 2: Alert the Respondent

The license holder and sponsoring broker, if applicable, will be notified in writing of the issue and given 14 days to correct it. The license holder must also provide documentation to staff that the advertising violations have been corrected.

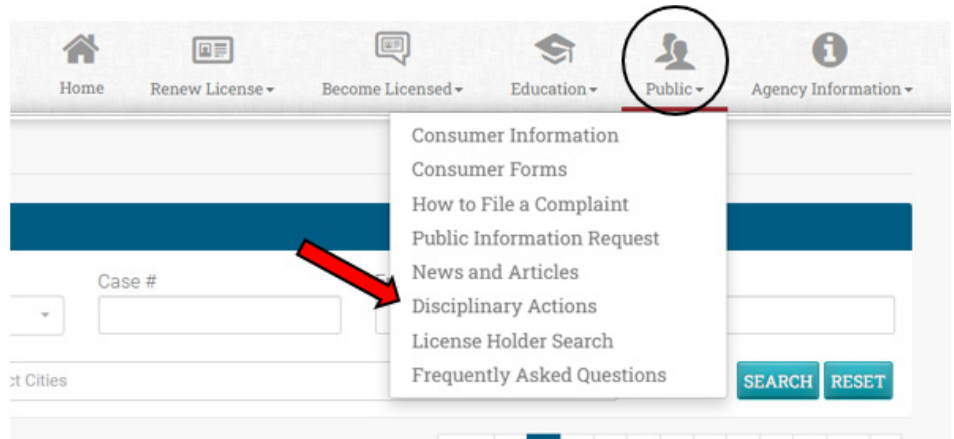
#### Step 3: Monitor the 14-Day Timeline

- **If license holders correct within 14 days**, the case will be dismissed as a matter settled and no formal disciplinary action would be held.
- **If license holders fail to comply with the 14-day deadline**, they would have their complaint reviewed again by a staff attorney for further action, which could include an advisory letter or formal discipline. Staff may grant additional time for compliance.



# Case Studies

Seeing is believing. What follows are TREC complaints that resulted in disciplinary action. They include issues around intermediary, showings, rental fraud, fiduciary duties, and geographic competency. TREC disciplinary actions are searchable on the TREC website by selecting “Disciplinary Actions” under the *Public* menu.



## Intermediary

### How *Not* To Be an Intermediary 101

#### Facts

Agent X represents a buyer and a seller. Agent X’s sponsoring broker allowed intermediary, but only with appointments. Agent X failed to abide by the broker’s policy on intermediary and made no appointments.

The buyer discovered that Agent X had a prior relationship with the seller. Further, Agent X failed to disclose this material information to the buyer to ensure that Agent X was acting impartially as an intermediary.

Agent X had agreed to compensate the buyer if anything in house needed repairs. Prior to closing, Agent X discovered that the seller had made changes to the property. Agent X did not disclose the full extent of the changes because his prior relationship with the seller failed to allow him to act impartially.

Agent X ultimately paid for the changes to the property with his earned commission.

#### Disciplinary Result

Agent X entered into an agreed order with TREC resulting in a reprimand, a \$2,000 administrative penalty, and a requirement to take 30 hours of agency law. Agent X’s broker entered into an agreed order resulting in a reprimand and a \$500 administrative penalty.

## Showing Issues

### This House is All Over Social Media!

#### Facts

Agent A misrepresented to listing agent by informing the agent he was planning to show a property when he instead allowed the property to be used for a social media event and photoshoot. Agent A also left the property unsupervised.

#### Disciplinary Result

Agent A entered into an agreed order with TREC resulting in a two-year

probated suspension, a \$1,500 administrative penalty, and a requirement to take a 30-hour agency course.

### Agent Snoopy Sam Gets Suspended

#### Facts

Agent Snoopy Sam entered two properties that were listed for sale and was filmed opening furniture drawers and opening items that were not fixtures of the home or property.

#### Disciplinary Result

Agent Snoopy Sam entered into an agreed order with TREC resulting in a four-year probated suspension and a \$2,500 administrative penalty.

## Rental Fraud

### Don’t Try to Snow the Snowman

#### Facts

On multiple occasions while representing individuals, Agent Ice would submit fraudulent documents including credit reports and

paystubs to allow unqualified clients to rent properties. Frequently, individuals listed as tenants were not the individuals who ultimately occupied the property. In most cases, the same fraudulent credit reports with same names were used in multiple transactions.

Ultimately, the owners/landlords would not receive rental payments and would need to evict the fraudulent tenants. TREC investigations determined that Agent Ice performed this fraud on multiple occasions. The broker failed to notice that rental documents repeatedly had the same tenant listed on multiple completed transactions.

### **Disciplinary Result**

Agent Ice's license was revoked and TREC administered an administrative penalty of \$13,000. Broker entered into an agreed order with TREC resulting in a reprimand and a \$500 administrative penalty.

## **The Art of the Deal Scam**

### **Facts**

Agent Z established relationships with multiple unlicensed individuals. The purpose of these relationships was so they would refer unqualified tenants to Agent Z to find property to lease.

Agent Z sent out completed lease applications with inaccurate or falsified records regarding income, credit history, and prior evictions to property managers and listing agents.

Agent Z continued this fraudulent and dishonest behavior for multiple transactions. Tenants would damage the property and fail to pay rent, and the owners or property managers would be forced to evict fraudulent tenants.

### **Disciplinary Result**

Following a State Office of Administrative Hearings (SOAH) hearing, Agent Z's license was revoked and TREC administered a \$48,750 administrative penalty. Broker entered into an agreed order with TREC resulting in a reprimand, a \$1,000 administrative penalty, and a requirement to attend the broker responsibility course.

## **Fiduciary Issues**

### **Agent Failed to Extend His Fiduciary Duties**

#### **Facts**

Agent All Hat was representing buyers in a transaction to purchase two adjacent parcels of land. A completed survey and other related issues were necessary by their lender to close.

Per the buyers' request, Agent All Hat submitted two extensions to the contract that the seller agreed to. Near the expiration of the second extension, the buyers asked Agent All Hat to request a third extension. Agent All Hat assured them it was not necessary and everything was on track.

The survey and other items were not completed by the expiration of the second extension of the contract, and Agent All Hat failed to present the sellers with an extension document. The sellers used the opportunity to terminate the contract and solicit from the buyers a higher sales price than the prior contract. Agent All Hat failed to attempt to secure a third extension to the contract to better protect his client.

#### **Disciplinary Result**

Agent All Hat entered an agreed order with TREC and was reprimanded, received a \$1,500 administrative penalty, and was required to take 30 hours of additional education. Broker entered an agreed order with TREC resulting in a reprimand and a \$500 administrative penalty.

### **Dishonesty Never Pays**

#### **Facts**

Agent Yarn Spinner was representing buyers in the attempted purchase of a home. Buyers provided a finance pre-qualification letter that contained some contingencies. Agent Yarn Spinner altered the document removing the contingencies and submitted the altered letter to the seller with the buyers' offer.

The buyers never directed Agent Yarn Spinner to make these changes. The seller's agent discovered the issue only days before closing and brought it to the attention of the sellers and other parties in the transaction.

Agent Yarn Spinner admitted he altered the letter in an attempt to make his clients'



offer more attractive to the seller. Agent Yarn Spinner's broker, when notified of the issue, directed another agent to assist the buyers in completing the transaction.

### **Disciplinary Result**

Agent Yarn Spinner entered an agreed order with TREC requiring a license suspension of four years, with three years and 10 months of the suspension probated. Agent Yarn Spinner paid an administrative penalty of \$9,000 and was required to take 30 hours of principles of real estate. Broker received an advisory letter.

## **Geographic Competency**

### **A River Highway Runs Through It (or Will)**

#### **Facts**

Listing agent W had no knowledge that a four-lane highway would be built adjacent to the property. Other listings for the subdivision included this information disclosing the future highway construction. The buyers purchased the property and later discovered the future construction and that it would be built 25 feet from their property line. Listing agent W admitted they were not aware of the construction project that had been planned for 20 years. The buyer's agent had no knowledge about the pending construction. Brokers for both listing and buyer's agent did not ensure their agents were competent to conduct activities, including competence in the geographic market area where the sales agents were actively performing brokerage activity.

### **Disciplinary Result**

Listing agent W entered into an agreed order reprimanding their license, \$500 administrative penalty, and additional education. Listing agent's sponsoring broker received an advisory letter. Buyer's agent entered into an agreed order reprimanding their license, \$500 administrative penalty, and additional education. Buyer's agent broker agreed to a reprimand of their license and \$500 administrative penalty.

## **Know Better Than to Mess with Texas ... Historical Districts**

#### **Facts**

Listing agent F had no knowledge that the property listing was in a designated historic

## **Best Practices to Avoid Complaints**

- Offer regular training for all license holders.
- Review all contract changes and updates with license holders.
- Review and incorporate TREC disciplinary actions into coaching sessions.
- Subscribe to and read the *TREC Advisor* e-newsletter (sign up at [trec.texas.gov](http://trec.texas.gov)).
- Follow TREC on the various social media outlets (like Facebook).
- Attend TREC Meetings virtually or in person.
- Review policies and procedures with everyone at least once a year.

neighborhood district that required approval for changes to the exterior of the property. The buyer purchased the property and made changes to the exterior by replacing the windows.

The buyer received notification from the historical district that the property modification was not approved by the district and the windows needed to be changed to conform with historical requirements. The buyer's agent stated they had no knowledge the property was in a historical neighborhood.

The information about the neighborhood was discoverable by an internet search and information in the MLS.

### **Disciplinary Result**

Listing agent F entered into an agreed order reprimanding their license and was required to take additional education. Listing agent's sponsoring broker entered into agreed order reprimanding their license and a \$500 administrative penalty. Buyer's agent entered into an agreed order reprimanding their license. Additionally, agent paid a \$500 administrative penalty and was required to take additional education. Buyer's agent's sponsoring broker entered into an agreed order reprimanding their license and agreed to an administrative penalty of \$500.



## Commission Priorities

The Texas Real Estate Commission is composed of nine commissioners appointed by the Office of the Governor. Six members are brokers who know the industry and understand consumer protection, and three members are public members who bring consumer perspective to the table in a different way. The Commission has been focused on three main topics:

- Broker responsibility
- Enforcement
- Outreach

What do all three of these priorities have in common? They are all related to consumer protection and education of license holders on how to practice in the State of Texas lawfully and ethically.

### Broker Responsibility

Changes have been made to the Broker Responsibility Course and the Real Estate Brokerage Course that focus on the responsibilities of a broker as it relates to sponsored sales agents. Oversight of training and coaching required under TREC Rule 535.2 has been increased so that a sponsoring broker must ensure their sponsored agents are conducting themselves competently when engaging in a new type of real estate brokerage activity.

In Legal Update I, Chapter 1, you learned about the new Broker Responsibility Advisory Committee. This committee will continue to examine and make recommendations to the full Commission regarding broker responsibility based on what those members are seeing in their practice.

This topic does not have a single solution or point of resolution; however, the Commission is committed to its focus on broker responsibility and ensuring consumer protection in the state of Texas.

### Enforcement

The Commission is committed to encouraging license holders and consumers to file complaints when there is a suspected violation of TREL A or TREC rules. The Commission is also working towards streamlining the complaint process to make it easier to file a complaint with the agency. Additional staffing has been added to the Enforcement Division. The Commission has also been spreading the message to come alongside license holders who are making mistakes and either help or file a complaint. Compliance with TREL A makes the industry better and it ensures consumer protection. All license holders have a role in that.

### Outreach

Do you follow TREC on social media or are you signed up to receive communications from TREC? If so, you have likely noticed a shift in communication strategy. The Commission is working hard to make sure the agency reaches license holders in a multitude of ways. The Commission is also working hard to let the consumer know what it should expect from a license holder. Partnerships with local associations, the title industry, and more are spreading the word to license holders about consumer protection and issues license holders face in the "real world." Make sure that as a license holder, you are monitoring these communications, because they provide helpful information and insight into the specific areas of concern the Commission seeks to address.