

NEW TREC RULES

Effective October 18, 2015

New Rules

1260-1-.18	New Firm Names
1260-1-.19	Appearance before the Commission
1260-1-.20	Military Applicants and Spouses
1260-1-.21	Reinstatement of Expired License
1260-2-.39	Commissions
1260-2-.40	Electronic Records
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Revised Rules

1260-2-.02

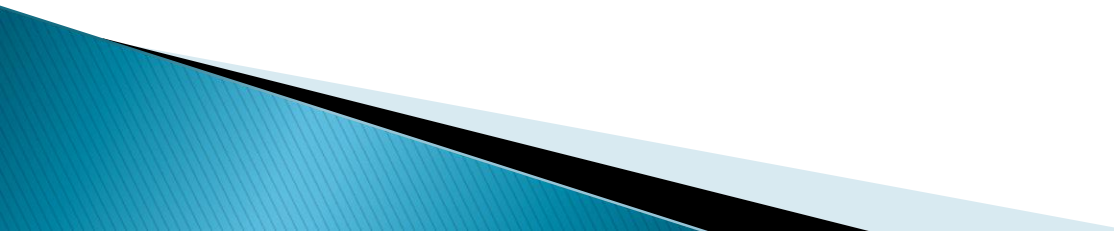
Termination of Affiliation

1260-2-.09

Earnest Money

1260-2-.12

Advertising



New Firm Names

1260-1-.18

TREC reserves the right to refuse a new firm name if it is the same or confusingly similar to that of an existing firm. (Does not look at trademarks, copyrights, etc.)

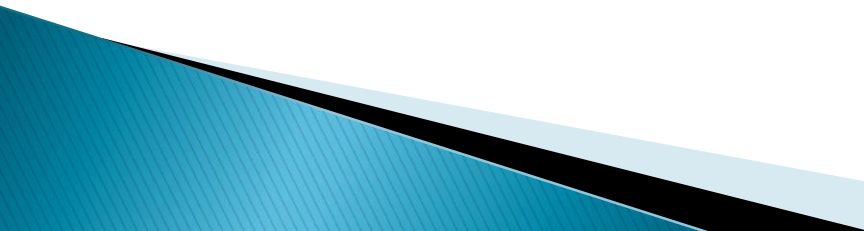
Commission staff reviews all applications to determine if the name would be confusing the public.

If rejected, applicant can appeal to the Executive Director (Eve Maxwell).

If Executive Director rejects the name, it can be appealed to the Commission whose decision is final.



Appearances before the Commission 1260-1-.19

- ▶ Any applicant making an informal appearance before the commission for purpose of obtaining a license must be accompanied by their future principal broker.
 - ▶ This is generally done when someone has a criminal issue in their past and are asking for a waiver for licensure.
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Military Applicants

1260-1-.20

This rule is the result of legislation passed wherein the state makes it easier and faster for military personnel and spouses of military personnel to get licensed in certain areas.

It allows for a temporary license if the applicant has not met all state requirements while the individual completes the requirements during a specific period time. After the requirements are fulfilled, a full license would be issued.

Military education, training, etc. can be used for required education if it is substantially similar to that required by the state.

If license expires while agent is on active duty, it allows for an easier reinstatement.

Reinstatement of Expired License

1260-1-.21

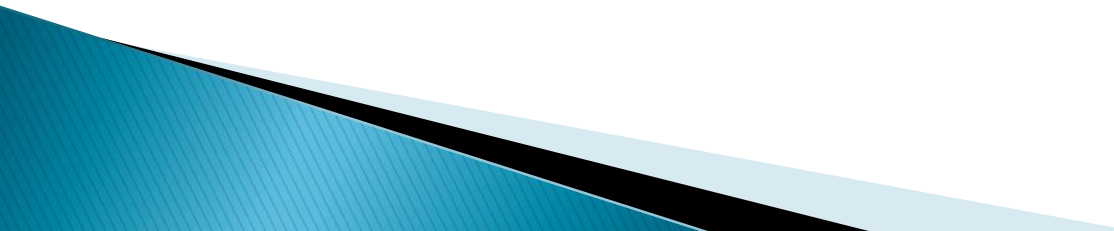
- ▶ Two types of reinstatement addressed in rule:
 - Expired due to health of licensee or licensee's family
 - Failure to comply with requirements for renewal of licensure (ex., education, payment of fees, E & O insurance)

Expiration Due to Medical Reasons

- ▶ After 60 days following expiration due to medical reasons, licensee can request a medical waiver from the Commission by submitting the following:
 - A signed doctor's statement regarding the nature and length of the illness
 - A signed statement from the licensee explaining the lapse
- ▶ If granted, renewal fees must be paid and all other requirements for licensure must be met, but no late fees will apply.

Any information submitted will be public record.

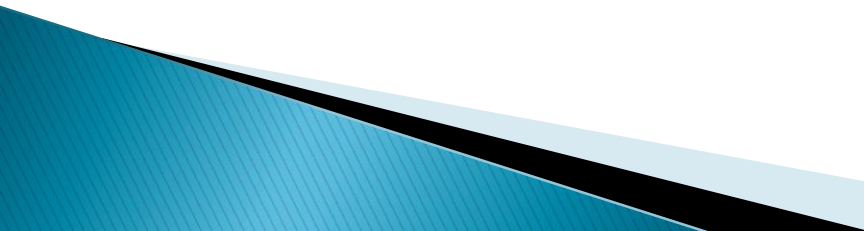
Failure to Comply with Licensure Requirements

- ▶ Within 60 days from expiration, licensee can provide proof of compliance with requirements (education, E & O, payment of renewal fees, etc.) and pay a penalty fee.
 - ▶ Penalty fee is \$50 for days 1–30 and \$100 for days 31–60.
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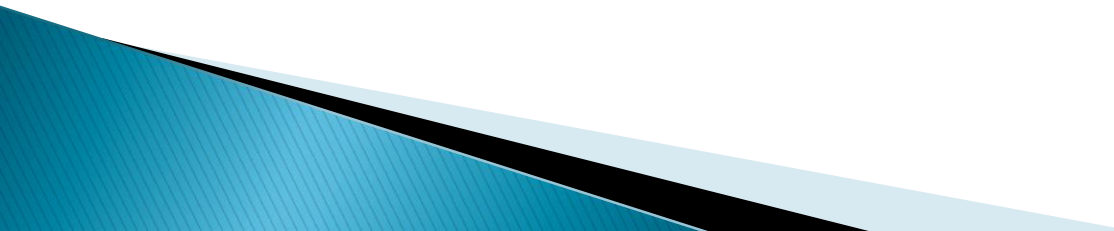
- ▶ After 60 days, licensee must:
 - Sign a Reinstatement Order in which the licensee:
 - Provides proof that licensee has met all requirements for licensure
 - Attend 1 full Commission meeting within 180 days of the Reinstatement Order
 - Payment of Penalty Fee
 - Expired licenses of 60–120 days, it is \$50 per 30 day period or portion thereof
 - Expired licenses of 120 days – 1 year, it is the above penalty, PLUS \$100.00 per 30 day period beginning on the 121st day
 - If more than 1 year, licensee must reapply for licensure, meet *current* education requirements and pass all exams.

Commissions

1260-2-.39

- ▶ A broker can pay a licensee directly who is no longer with the firm as long as the licensee had his license affiliated at the firm at the time that the property went under contract.
 - ▶ This applies to situations where the licensee
 - Transfers license to new broker
 - Retires his/her license
 - Has license in broker release status
 - Allows his license to expire
 - Passes away
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Electronic Records

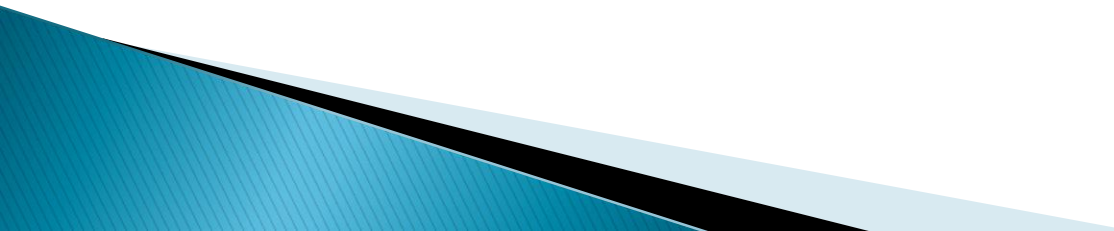
- ▶ This rule is taken from Policy 2013-CPS-009
 - ▶ According to TREC, an agent must preserve his records for 3 years.
 - ▶ TAR recommends that records be kept at least 7 years because a breach of contract claim can be brought for six years.
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To keep records electronically, you must have the following in place...

Records must be accessible in an organized way within 24 hours of request for inspection

Must develop and use a retention schedule that maintains the security, authenticity and accuracy of the records.

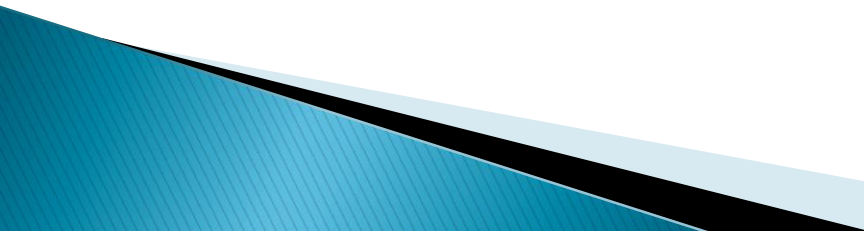
Must maintain the software and hardware that will allow the information to be accessed in a readable format.



Teams (part 1)

1260-2-.41

- ▶ This is TREC's first step into regulating teams and similar groups
- ▶ You should also see the rule changes to the advertising rule at 1260-2-.12

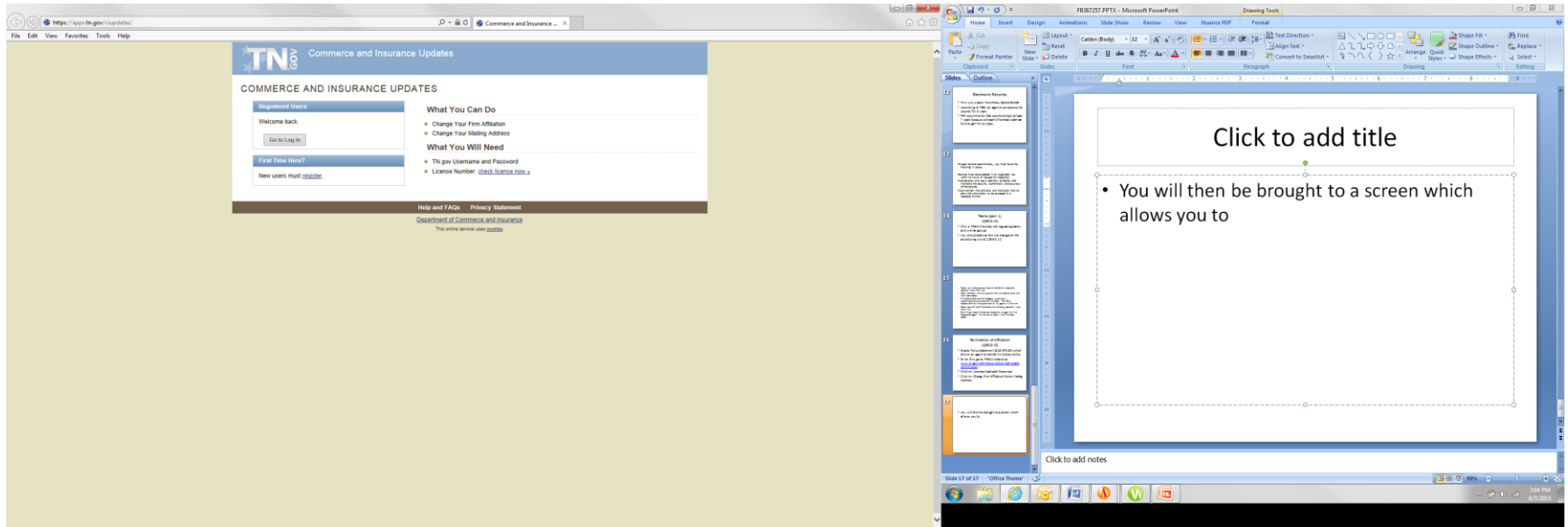
- ▶ Teams (or similar groups) cannot establish a separate location from their firm.
 - ▶ Team members must be paid by their principal broker, not their team leader.
 - ▶ Principal broker cannot delegate supervisory responsibilities to anyone on the team. The PB is responsible for the supervision of ALL agents in the firm.
 - ▶ Teams cannot hold themselves out as being separate from their firm.
 - ▶ Only the principal broker can designate an agent as the designated agent for a buyer or seller – not the team leader.
- 


Termination of Affiliation

1260-2-.02

- ▶ Enacts Policy Statement 2013-CPS-001 which allows an agent to transfer his license online.
- ▶ To do this, go to TREC's Website at www.tn.gov/commerce/section/real-estate-commission
- ▶ Click on Licensee/Applicant Resources
- ▶ Click on Change Firm Affiliation/Home Mailing Address

You will then be brought to a screen which looks like this...



- ▶ You will then either become a Registered User or Log in if you are already a Registered User.
 - ▶ Plug in information requested and then register a user name and password.
 - ▶ Once registered, you can transfer your license. Your new principal broker can log on and affiliate your license with your new firm.
 - ▶ New PB must verify that agent has an active real estate license and current E & O insurance and send in a TREC 1 Form that has been completed and signed within 5 business days of online transfer.
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- ▶ Remember, all listings and buyer representation agreements belong to the firm, not the individual agent. The agent can only take them with him/her with the written permission of the PB. (If the PB is the one leaving, he/she should get the written permission of the owner).

Earnest Money

1260-2-.09

- ▶ This rule underwent a MAJOR overhaul.
- ▶ TREC has introduced several new terms:
 - Commingling
 - Trust Money

Commingling

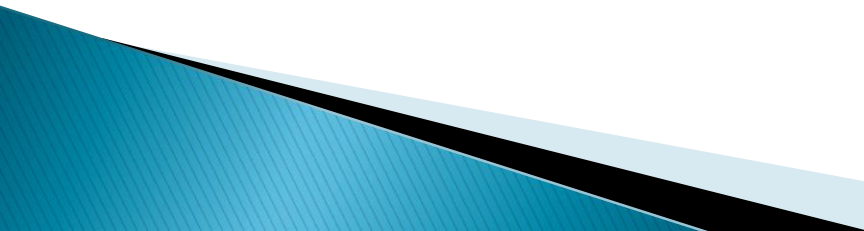
- ▶ This is “the act of a licensee maintaining funds belonging to others in the same bank account that contains his or her personal or business funds.” TREC Rule 1260-2-.09(1)(a)

Trust Money

This is either of the following:

1. Money belonging to others received by a licensee who is acting as an agent or facilitator in a real estate transaction
- OR
2. Any money held by a licensee who acts as the temporary custodian of funds belonging to others

TREC Rule 1260-2-.09(1)(b)



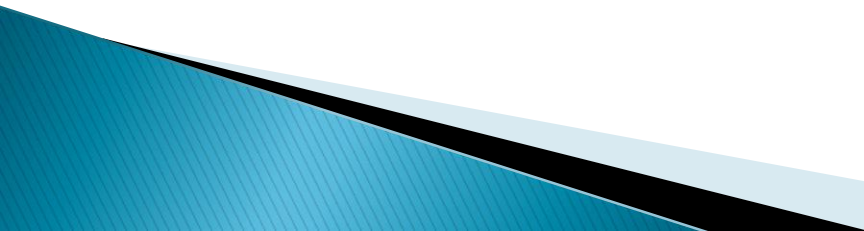
**Who is responsible for the escrow
or trust account?**



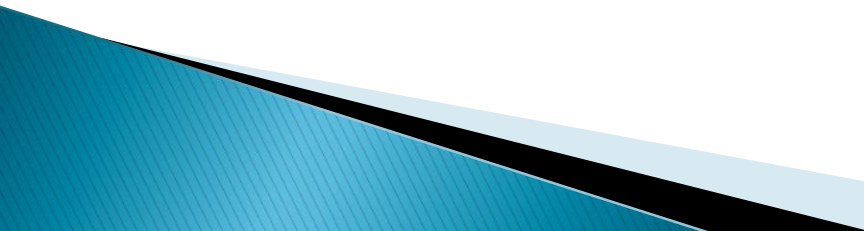
- ▶ The principal broker. This is true regardless of whether the broker is the owner or if the firm is owned by someone else.

▶ Responsibilities:

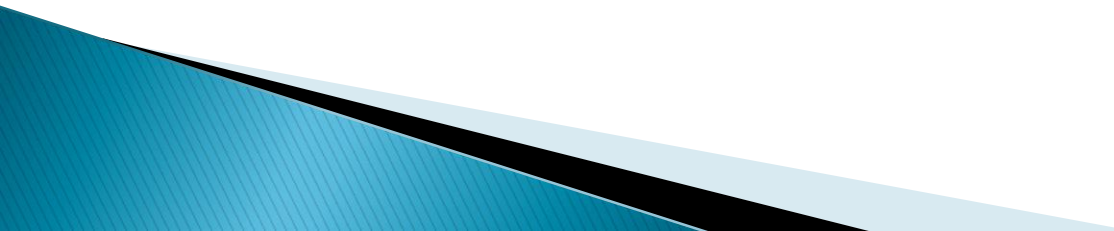
- Affiliated brokers must turn over ALL trust money funds to their principal broker IMMEDIATELY upon receipt.
- Principal brokers are responsible for the trust money in accordance to the terms of the contract (be it a purchase and sale agreement, lease, etc.)
- If contract states that someone other than a firm (principal broker) is to hold the funds, the principal broker's responsibility ends once he/she turns the funds over to that person or entity (i.e., title company)

- ▶ Contract requirements (leases, purchase and sale agreements, etc.). Contract must clearly state
 - The terms and conditions for disbursement of trust money AND
 - The name and address of the person or firm which will actually hold the trust money.
- 


Distribution of Trust Money

- ▶ When is it proper?
 - Upon a reasonable interpretation of the contract
 - Pursuant to a written agreement signed by all parties that have an interest in the trust money (whether it be earnest money, security deposit, etc.)
 - At the closing
 - Upon the rejection of an offer to purchase, sell, rent, lease, exchange or option
 - Upon the withdrawal of an offer to purchase, sell, rent, lease, exchange or option
 - Upon the filing of an interpleader
 - Upon the order of a court of competent jurisdiction
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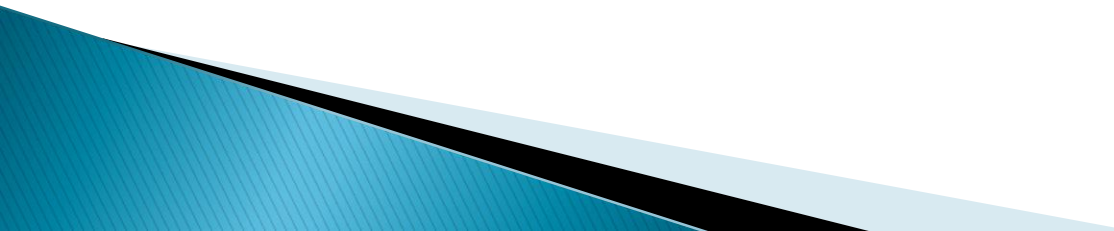
Useful forms to accomplish this

- ▶ RF / CF 481: Earnest Money Disbursement and Release
 - ▶ RF 629: Resolution of Disputes by Mediation Addendum/ Amendment
 - ▶ RF / CF 706: Interpleader
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What is an Interpleader?

- ▶ An interpleader is a lawsuit where the rightful recipient of the trust money is determined.
 - ▶ Filed by real estate firm in the county where the company is located
 - ▶ Filed in either General Sessions Court (up to \$25,000) or Circuit Court (over \$25,000)
 - ▶ If your company is an LLC, Corporation or certain types of partnerships, you will have to have an attorney file the interpleader
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Important Things to Remember...

- ▶ As a principal broker, you have 21 days to get rid of the funds once they are requested in writing...
 - ▶ Thou shalt not commingle funds
 - ▶ If you practice property management, security deposits must be held in a separate trust account. This goes for both residential and commercial real estate.
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Interest Bearing Accounts

- ▶ They are allowed under certain circumstances.
 - At the time of contract, agent must disclose to the person paying the funds that the funds will be placed in an interest bearing account.
 - Licensee and payor have to execute a written agreement setting out the manner in which the interest is earned
 - Licensee does not own the trust \$ or interest until it has been properly distributed to the licensee
 - Licensee must keep a detailed accounting of the precise sum of interest earned for each separate deposit.

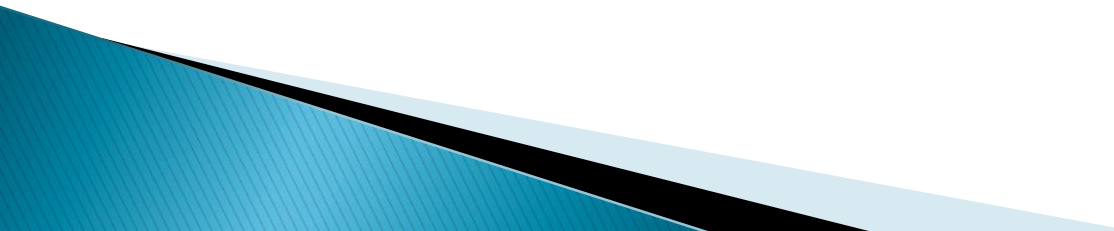
- ▶ AND NOW, THE REASON YOU ARE ALL HERE...
 - ▶ THE ADVERTISING AND TEAM RULES
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1260-2-.12

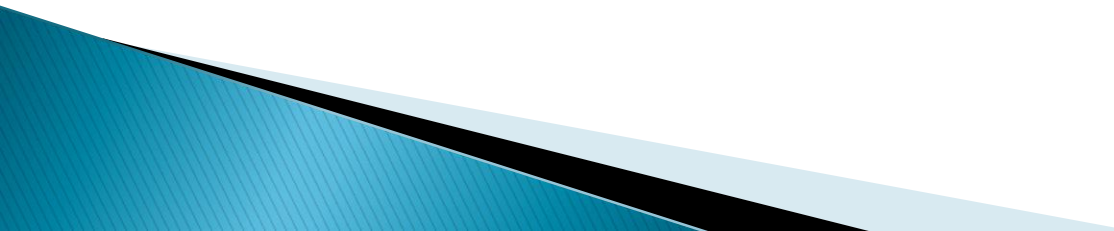
Advertising

- ▶ TREC has now defined what constitutes advertising...

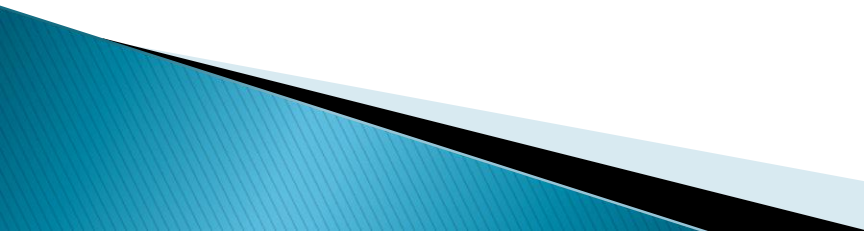
What it is

- ▶ Traditional print
 - ▶ Radio
 - ▶ Tv advertising
 - ▶ Signs
 - ▶ Flyers
 - ▶ Letterhead
 - ▶ E-mail signatures
 - ▶ Websites
 - ▶ Social media communications (Facebook, twitter, vines, etc.)
 - ▶ Video and audio recordings
- 

What it is not...

- ▶ Hats
 - ▶ Pens
 - ▶ Notepads
 - ▶ T-shirts
 - ▶ Nametags
 - ▶ Business cards
 - ▶ Sponsorship of charitable and community events
- 

General Requirements

- ▶ Principal broker is responsible for ALL advertising
 - ▶ Must include firm name and telephone number in ALL advertising
 - ▶ Firm name must be the *most prominent name* in the ad
 - ▶ Firm telephone number must be the same size or larger than any other telephone number
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Names

- ▶ Firm name
 - Must be the entire name as registered with TREC OR
 - The d/b/a name as registered with TREC
- ▶ Licensee name
 - Must be the name which is on your license
 - If you have nickname, make sure that it is registered

False, misleading and/or deceptive advertising

- ▶ TREC has now given examples of what would constitute false, misleading or deceptive advertising.
- ▶ These include:
 - Including only the franchise name without the firm name
 - Team names which incorporate the “Terrible Ten” words that give the impression of being a separate firm
 - A website that has a link to an unlicensed entity’s website that is engaged in activities that require a license

Terrible Ten

Real Estate

Real Estate Brokerage

Realty

Company

Corporation

LLC

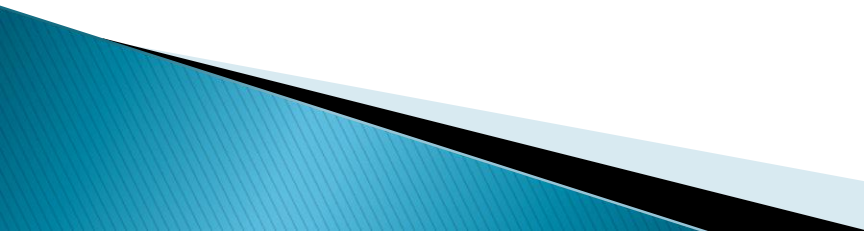
Corp.

Inc.

Associates

And the catch all – similar terms that would lead the public to believe they are offering services independent of the firm and brokerage

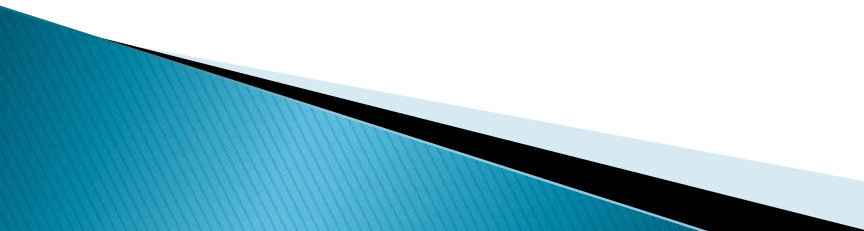
Internet Advertising

- ▶ Applies to all internet advertising, including social media (Facebook, Vine, Twitter, etc.)
 - ▶ Must have firm name and telephone number
 - ▶ Each page of website which has feed of listings from other companies (IDX) must have disclaimer that not all are listed with firm
 - ▶ Must be kept current and accurate. Applies to 1st Generation advertising.
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Guarantees, Claims, Offers

- ▶ This has been in effect for awhile, but is often overlooked
- ▶ Any offer, claim, etc. cannot contain unsubstantiated selling claims or misleading statements or inferences
- ▶ If you make an offer to persuade someone to do business with you, it must:
 - Be in writing AND
 - Disclose all pertinent details on the face of the ad.

TEAMS

- ▶ Cannot establish a location separate from the firm which is team use
 - ▶ Compensation can only be paid by the principal broker - **NOT** the team leader
 - ▶ Principal broker **CANNOT** delegate supervisory responsibilities to any one else.
 - ▶ Teams cannot hold themselves as being separate from their firm
 - ▶ Only the principal broker can designate someone as a designated agent, not the team leader
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TAR Legal Hotline

If you have questions concerning this or anything else in the Broker's Act, TREC Rules, Code of Ethics or forms, contact the TAR Legal Hotline!

Phone: (800) 899-5297

Email: hotline@tarnet.com

Online: Helpdesk at www.tarnet.com

