TEXAS REALTORS®

April 5, 2024

VIA EMAIL

Ms. Vanessa Burgess, General Counsel
Texas Real Estate Commission
general.counsel@trec.texas.gov

RE: Proposal for Amendments to Texas Real Estate Commission Forms

Dear Ms. Burgess:

As you are aware, the National Association of REALTORS® entered into a settlement agreement in a federal class-action lawsuit that requires changes to the way real estate license holders can advertise compensation when representing clients. Among other things, listing brokers will no longer be allowed to include compensation for a buyer's broker in a home's listing in a multiple listing service.

Texas REALTORS® recently convened a member task force to review both TREC and Texas REALTORS® forms for potential revisions to deal with the coming changes. Some modest updates to TREC's promulgated forms such as removing reference to an MLS or allowing seller concessions for paying a buyer's broker would both bring clarity to consumers regarding compensation and allow license holders to comply with the NAR settlement requirements.

Unless otherwise stated, the following suggestions refer to:

- TREC 20-17, One to Four Family Residential Contract (Resale)
- TREC 23-18, New Home Contract (Incomplete Construction)
- TREC 24-18, New Home Contract (Completed Construction)
- TREC 30-16, Residential Condominium Contract (Resale)
- TREC 9-16, Unimproved Property Contract
- TREC 25-17, Farm and Ranch Contract

Recommendation #1 – Remove reference to broker payment being contained in separate written agreements.

Our first recommendation is to update Paragraph 8. BROKERS' FEES to remove subsection B which has language referencing obligations for payment of brokers' fees in separate written agreements. If a seller agrees to concessions to help the buyer with the cost of the buyer's broker, that obligation would not necessarily be contained in a separate written agreement.

> ~~B. BROKERS' FEES: All obligations of the parties for payment of brokers' fees are contained in separate written agreements.~~

Recommendation #2 – add the ability for a seller to offer concessions to pay the buyer's broker to Paragraph 12. SETTLEMENT AND OTHER EXPENSES.

One point raised in the NAR settlement is that seller concessions can be an alternative method of compensating a buyer's broker. The current TREC contracts do not contemplate that option. We recommend adding a new subsection (c) to Paragraph 12.A(1) as a "Seller Expense" to allow the seller to pay an amount for the buyer's broker as a concession:

> (c) Seller shall also pay $________________ toward compensation to Buyer's broker.

To make clear that seller concessions are allowable, we also recommend adding "broker fees" to the definition of Buyer Expenses in Paragraph 12.A(2):

> Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; origination charges; […] Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; broker compensation; and other expenses payable by Buyer under this contract.

Recommendation #3 – if changes are made to add new section 12.A(1)(c) as recommended above, make corresponding change to form TREC 39-9, Amendment.

Currently, TREC 39-9, Amendment, has the option to amend the amount listing in paragraph 12.A(1)(b) regarding the amount of Seller's Expenses the parties have agreed to. If the Committee recommends adding a new section 12.A(1)(c), we recommend updating the Amendment to allow amending the amount of Seller's Expenses going to the Buyer's broker.

Recommendation #4 – remove the reference to an MLS in the Disclosure at the bottom of the Broker Information page and clarify payment responsibility to brokers.

Because compensation no longer comes from an MLS offer of compensation, reference of the MLS should be removed and language broadened to encompass other methods of compensation to the buyer's broker.

> Disclosure: Pursuant to a previous, separate agreement (such as ~~a MLS offer of compensation or other~~ an agreement between brokers or with a party), ~~Listing Broker has agreed to pay~~ Other Broker will be paid a fee (____________________________). This disclosure is for informational purposes and does not change ~~the~~ any previous agreement to pay Buyer's broker ~~between brokers to pay or share a commission~~.

Because the Farm and Ranch Contract (TREC 25-15) includes more comprehensive language regarding broker compensation, we recommend the following changes for clarity:

1. Remove the RATIFICATION OF FEE section at the top of page 10, and

2. Update the language at the bottom of page 10 as suggested below:

> Upon closing of the sale by Seller to Buyer of the Property described in the contract to which this fee agreement is attached: (a) ☐ Seller ☐ Buyer will pay Listing/Principal Broker ☐ a cash fee of $__________, ~~or~~ ☐ ________% of the total Sales Price, or by separate agreement; and (b) ☐ Seller ☐ Buyer will pay Buyer's broker ~~Other Broker~~ ☐ a cash fee of $__________, ~~or~~ ☐ ________% of the total Sales Price, or by separate agreement. Seller/Buyer authorizes and directs Escrow Agent to pay the brokers from the proceeds at closing.

Texas REALTORS® appreciates this opportunity to suggest changes to TREC contracts to ensure clarity for consumers and license holders when it comes to broker compensation. We hope we can continue to provide input and be a resource to the Broker Lawyer Committee and to the Texas Real Estate Commission on these issues. If we can provide any further information, please do not hesitate to contact me.

Sincerely,

Lori Levy
Texas REALTORS® General Counsel
and Vice President of Legal Affairs