

FREQUENTLY ASKED QUESTIONS

1. Is a licensee required to furnish the statutory "written statement" at a(n).
 - a. Social gathering?
A. Any notice required to be furnished in this situation should be furnished by the licensee as soon as practicable.
 - b. Open house?
A. Not required at open houses for prospective buyers or tenants.
 - c. Real estate office when a buyer or seller prospect enters "off the street"
A. Not required unless there is a substantive discussion with respect to specific real property.
 - d. First Contact?
A. Only required at the first "face-to-face" contact and only if there is a substantive discussion with respect to real property.
2. Is a licensee, who has an agency relationship with a party in a proposed real estate transaction, required to furnish disclosure of agency at a(n):
 - a. Open house?
A. Yes.
 - b. First contact?
A. Yes
 - c. Meeting with no substantive discussion
A. Yes
 - d. To a seller represented by another licensee?
A. Yes, unless the seller's representative has already received the disclosure of

agency, in which case the seller is deemed to be informed by imputed notice.

e. To an unrepresented buyer?

A. Yes.

3. When is a buyer's agent required to furnish a disclosure of agency to a seller's agent?
A. At the first contact unless the buyer's agent has previously made a disclosure of agency to the seller.
4. When is a seller's agent required to furnish a disclosure of agency to a buyer's agent?
A. At the first contact unless the seller's agent has previously made a disclosure of agency to the buyer.
5. When a buyer's agent first contact is to the broker's unlicensed receptionist to schedule a property showing, how should the buyer's agent make the disclosure of agency?
A. No disclosure of agency is required to be given to a non-licensee. However, the first contact by the buyer's agent with a licensee in the brokerage company unless the buyer's agent first furnished the disclosure of agency to the brokerage company's client.

For additional information, read and become familiar with the Texas Real Estate License Act, the Rules of the Texas Real Estate Commission and the Code of Ethics of the National Association of REALTORS®

Ya Gotta' Tell

The Real Estate Professional's Guide To Disclosure Requirements

Provided by:
MetroTex Association of REALTORS®
8201 N. Stemmons Freeway
Dallas, Texas 75247
214.637.6660
fax 214.637.5951
www.dfwrealtors.com
Your On-Line Real Estate Resource

In Texas, a real estate licensee is obligated to furnish specific disclosures, comply with statutory duties and ethical practice when meeting with the public. These requirements are based in Texas laws as well as the Code of Ethics of the National Association of REALTORS® (NAR).

WHY DISCLOSE?

While disclosure requirements may sometimes seem burdensome, they are carefully designed to protect both the public and the real estate licensee.

This brochure explains:

the Texas disclosure of agency requirements,
the “written statement” requirements, and
the related ethical duties associated with the NAR Code of Ethics.

AGENCY DISCLOSURE

Agency disclosure informs prospective buyers, sellers, landlords and tenants of the responsibilities the real estate licensee has in a proposed transaction. Since 1939 the Texas Real Estate License Act (TRELA) has provided that a real estate license can be suspended or revoked if the broker or salesperson has been found guilty of “failing to make clear to all parties to a transaction which party the licensee is acting for.”

Recent revisions to TRELA (§15C) now require agency disclosure at “first contact.” Additionally, §531.1(1) of the Rules of the Texas Real Estate Commission (Rules) states that the real estate broker or salesperson, while acting as an agent for another, is a fiduciary and must make this position clear to all parties in a real estate transaction.

The TRELA also requires that the real estate licensee disclose the agency relationship to other licensees who represent the other party in a proposed transaction at “first contact.” In complying with the letter and spirit of the law, these disclosure requirements mean each initial contact the licensee has with any party to a transaction or any other licensee has with any party to a transaction or any other licensee representing a party to the transaction and each licensee knows “who represents whom.”

When the licensee is engaging in a transaction in the licensee’s own interest, that licensee is obligated to inform any other principal involved that the licensee is a real estate broker or salesperson acting in that licensee’s own behalf. This disclosure must be in writing and given prior to entering into any sales contract or lease agreement. While the law does not always require a written disclosure of agency, an acknowledged disclosure provides clear evidence of the licensee’s compliance with TRELA.

Similarly, the NAR Code of Ethics (Standard of Practice 16-10) requires the licensee, when acting as a buyer’s or tenant’s agent, to disclose that relationship to the seller’s or the landlord’s agent at first contact, obtaining a written acknowledgment not later than the execution of a purchase agreement or lease. The licensee, in accordance with Standard of Practice 16-12, when acting as an agent of the seller or the landlord, must disclose that relationship to the buyer or tenant as soon as practicable and in writing not later than the execution of any purchase or lease agreement.

SUMMARY OF DISCLOSURE REQUIREMENTS

1. The licensee must make clear to all parties who the licensee is acting for [TRELA §15(a)(6)(D)].
2. The licensee must disclose the representation at the first contact with either the other party or the other licensee in a proposed real estate transaction, which disclosure may be made orally or in writing [TRELA §15C(a) and (b)].
3. When acting as an agent/ fiduciary, the licensee’s position should be clear to all parties concerned in a real estate transaction [Rules §531.1(1)].
4. A licensee has a duty to convey accurate information to members of the public with whom the licensee deals [Rules 535.156(d)].
5. The buyer’s agent shall disclose that agency relationship to the seller’s agent at first contact and shall provide written confirmation of that disclosure not later than the execution of a purchase agreement [NAR Code of Ethics Standard of Practice 16-10].
6. The seller’s agent shall disclose that agency relationship to buyers as soon as practicable and shall provide written confirmation of such disclosure to buyers not later than the execution of any purchase agreement [NAR Code of Ethics Standard of Practice 16-12].
7. The licensee when acting for (a) the licensee’s own behalf, (b) any member of the licensee’s immediate family, (c) the brokerage firm or (d) any entries in which the licensee has any present or contemplated ownership interest must disclose that position in writing in advance to any other principal with whom the licensee is dealing before entering into a purchase or lease agreement [Rules §535.144 and NAR Code of Ethics Standard of Practice Article 4 and 4-1].

THE STATUTORY “WRITTEN STATEMENT”

Texas law requires each real estate licensee to furnish the statutory “written statement”, in accordance with §15C(d) of the TRELA to prospective buyers, sellers, landlords, and tenants, at the first face-to-face contact except under

five specific exceptions. This information is specifically designed to inform the public of the most common brokerage services real estate brokers and salespeople provide. The importance of providing the statutory “written statement” is to alert the consumer in advance of the responsibilities the licensee may have prior to engaging the licensee in an agency, or other real estate relationship.

EXCEPTIONS TO PROVIDING THE STATUTORY “WRITTEN STATEMENT”

1. The proposed transaction is for a residential lease for not more than one year and no sale is being considered.
2. The licensee meets with a party who is represented by another licensee.
3. No substantive discussion occurs with respect to specific real property.
4. Properties held open for prospective purchasers or tenants.
5. A meeting occurs after the parties to the transaction have signed a contract to sell, buy, rent or lease the real property concerned.

While Texas licensees are not required to furnish the statutory “written statement” at open house, they are required [TRELA § 15C] to provide either a written or oral disclosure of agency at first contact. Many Texas licensees confuse the requirement for the statutory “written statement” with the “disclosure of agency”

SUMMARY OF STATUTORY “WRITTEN STATEMENT” REQUIREMENTS

1. The licensee at the first face-to-face meeting must furnish the statutory “written statement” to a prospective buyer, seller landlord, or tenant.
2. The statutory “written statement” is not required to be furnished in five specific exemptions.
3. The statutory “written statement” may be printed in any format that uses at least 10-point type.
4. The statutory “written statement” is **not** a contract or agreement.
5. The statutory “written statement” is **not** a disclosure of agency.

PENALTIES FOR FAILURE TO COMPLY

Failure to comply with the provisions of the Texas Real Estate License Act may result in a reprimand, suspension or revocation of a license, or an administrative fine by the Texas Real Estate Commission. Civil and criminal penalties may be available also.