

## Final Exam: Texas Law of Agency v9 Final Exam

QUESTION# 1      **Unit 4**

[QID: re\_question\_00067\_715.dita]

The fiduciary relationship that arises when one person (a principal) manifests assent to another person (an agent) that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests or otherwise consents so to act, is called

- a common law relationship.
- **an agency relationship.**
- a customer relationship.
- an arm's-length transaction.

The answer is an agency relationship. This is the definition for agency as defined by *The Restatement of the Law of Agency* (3rd ed.).

QUESTION# 2      **Unit 2**

[QID: re\_question\_00067\_716.dita]

A seller listed her home with XYZ Brokerage. A buyer went to ABC Realty and the broker agreed to help her find a home. The buyer's broker found the XYZ listing in the MLS and showed it to the buyer who wrote an offer. The MLS offered compensation to both buyer's agents and subagents. Which is a *TRUE* statement?

- The ABC broker does not represent the buyer.
- The XYZ broker must be an intermediary.
- The ABC broker must be the subagent of the seller.
- **The ABC broker must be the agent of the buyer.**

The answer is the ABC broker must be the agent of the buyer. The key in the scenario is the reference of "the buyer's broker." If both the buyer and broker agree on representation the broker is now referred to as "the buyer's agent." ABC Realty could represent the buyer since the broker at ABC Realty is not associated with XYZ Brokerage.

QUESTION# 3      **Unit 10**

[QID: re\_question\_00067\_717.dita]

"No real estate license holder shall inquire about, respond to, or facilitate inquiries about, or make a disclosure of any owner, previous or current occupant, potential purchaser, lessor, or potential lessee of real property which indicates or is intended to indicate any preference, limitation, or discrimination based on the following: 1) race; 2) color; 3) religion; 4) sex; 5) national origin; 6) ancestry; 7) familial status; or 8) disability." This statement is a part of 22 TAC §531: Canons of Professional Ethics and Conduct, which is found in the

- Real Estate License Act.
- Truth in Lending Act (TILA).
- **TREC Rules.**
- Texas Statute of Frauds.

The answer is TREC Rules. TREL §1101.151(b) grants TREC the authority to establish standards of conduct and ethics for persons licensed under the act. Thus, by rule, 22 TAC §531: Canon of Professional Rules and Conduct includes the five canons of professional ethics and conduct that apply to all real estate license holders. These rules support the federal Fair Housing Act by prohibiting discriminatory practices against protected classes: race, color, religion, sex, national origin, familial status, disability, or ancestry (the last is not required under the federal Fair Housing Act).

QUESTION# 4    **Unit 1**

[QID: re\_question\_00067\_718.dita]

A broker has 15 sales agents in her firm. Sales agent 1 procures an exclusive right to sell listing agreement from a seller. What is the agency relationship of the parties?

- The broker is the only agent of the seller; the seller is the principal/client of the broker; and all 15 sales agents are agents for the broker only and have no agency relationship to the seller.
- **The broker is the agent of the seller; the seller is the principal/client of the broker; sales agent 1 is an agent to broker and, by way of the broker, is an agent for the seller; and the other 14 sales agents are agents for the broker and, by way of the broker, are also agents for the seller.**
- Sales agent 1 is the only agent of the seller; the other 14 sales agents have no agency relationship with the seller; the broker will conduct himself as an advisor to sales agent 1 only; and the seller is a principal/client of sales agent 1 only.
- The broker and sales agent 1 are both direct agents for the seller; the seller is the principal/client of both the broker and sales agent 1; and the other 14 sales agents have no relationship with the seller, but are agents for the broker/principal.

The answer is the broker is the agent of the seller; the seller is the principal/client of the broker; sales agent 1 is an agent to the broker and, by way of the broker, is an agent for the seller; and the other 14 sales agents are agents for the broker and, by way of the broker, are also agents for the seller. Once a buyer or seller requests a broker to represent him in a real estate transaction, and the broker consents to so act on behalf of the buyer or seller, an agency relationship has been established. The signing of an exclusive right to sell listing agreement, or an exclusive buyer representation agreement, further commemorates the agreement in writing.

QUESTION# 5    **Unit 2**

[QID: re\_question\_00067\_719.dita]

An agent would *NOT* owe fiduciary duties to a

- principal.
- client.
- **customer.**
- sponsoring broker.

The answer is customer. Fiduciary duties are owed to a client, the person the agent represents. No fiduciary duties are owed to a customer, who is someone you work with but do not represent.

QUESTION# 6     **Unit 10**

[QID: re\_question\_00067\_720.dita]

An agent owes fiduciary duties to

- principal.
- client.
- sponsoring broker.
- **all of these.**

The answer is all of these. Fiduciary duties are owed to a client, the person the agent represents. No fiduciary duties are owed to a customer, who is someone you work with but do not represent.

QUESTION# 7     **Unit 4**

[QID: re\_question\_00067\_721.dita]

A sales agent sold a property to an unrepresented buyer in a cooperative sale. Which statement is *TRUE*?

- The sales agent is a subagent of the seller's broker.
- **The sales agent represents her broker, who is a subagent of the seller's broker.**
- This is a cooperative sale and no subagency exists.
- The sales agent would only be a subagent if she sold one of her broker's listings.

The answer is the sales agent represents her broker, who is a subagent of the seller's broker. Because this was referred to as a co-op sale there are two firms involved. In addition, Anna sold the property to an unrepresented buyer, a customer. Because Anna did not represent the buyer then she and her firm represent the seller as a subagent through the listing broker.

QUESTION# 8     **Unit 8**

[QID: re\_question\_00067\_722.dita]

One who has accepted a delegation of authority to act for and on behalf of another is a(n)

- principal.
- client.
- facilitator.
- **agent.**

The answer is agent. Both principal and client refers to the party a broker represents. A facilitator represents no one. So an agent is one who accepts a delegation of authority and acts for that party.

QUESTION# 9     **Unit 10**

[QID: re\_question\_00067\_723.dita]

A real estate broker hired by the buyer to locate a property must obey all of the following *EXCEPT*

- the instructions of the buyer.
- the agency law.
- state licensing law.
- **the instructions of the seller.**

The answer is the instructions of the seller. A buyer's agent owes the fiduciary duty of obedience to the buyer, not the seller.

QUESTION# 10    **Unit 2**

[QID: re\_question\_00067\_724.dita]

Which statement is *TRUE* when a broker is representing the parties in an intermediary transaction?

- Neither the broker nor the appointed associates may give the parties advice and opinions.
- **The appointed associates of the broker may give the parties advice and opinions.**
- The seller's appointed associates must tell the seller if the buyer said she would pay more than the offered price.
- The buyer's appointed associates must tell the buyer if the seller said he would accept less than the offered price.

The answer is the appointed associates of the broker may give the parties advice and opinions. The salespeople are allowed to give advice and opinions to the respective parties, but the broker must remain neutral. Even the appointed salespeople cannot disclose that the seller will accept less or that the buyer will pay more, at least not without the written consent of that party.

QUESTION# 11    **Unit 3**

[QID: re\_question\_00067\_725.dita]

A seller's agent is permitted by law to

- make a secret profit in addition to the commission.
- **present an offer from the agent's parents with full disclosure of the relationship.**
- agree to a counteroffer without the buyer's approval.
- accept a bonus from the seller without the buyer's approval.

The answer is present an offer from the agent's parents with full disclosure of the relationship. An agent may represent a spouse or a person related to the license holder in the first degree of consanguinity (parent, child) so long as the agent makes full written disclosure. The other answers represent illegal acts under Texas Agency Law. (§ 1101.652(a)(3); .652(b)(2);(8);(13);&(20); 22 TAC § 535.144 (b))

QUESTION# 12    **Unit 7**

[QID: re\_question\_00067\_726.dita]

Mutual agreement to terminate a written agency agreement

- may be done orally.
- must include consideration paid to the broker.
- **must be in writing.**
- must include a waiver of the client's rights under DTPA.

The answer is must be in writing. If an agency relationship was created in writing and the parties now mutually agree to terminate that relationship it must also be done in writing.

QUESTION# 13      **Unit 5**

[QID: re\_question\_00067\_727.dita]

An agency relationship with a buyer may be created by

- directly by any licensed sales agent.
- an express written agreement only.
- **implication, an express written agreement, or an express oral agreement.**
- showing property to a buyer.

The answer is implication, an express written agreement, or an express oral agreement. An agency relationship cannot be created directly by a sales agent and can be created by other methods than written agreement. Although an agency relationship could be created by showing a property to a buyer (a possible implied agency) the best answer is by implication, written agreement, or orally.

QUESTION# 14      **Unit 5**

[QID: re\_question\_00067\_728.dita]

A seller would generally *NOT* be liable for the acts and representations of the

- **buyer's agent.**
- cooperating broker acting as subagent.
- listing broker.
- sales agent of the listing broker.

The answer is buyer's agent. One of the advantages of buyer's agency is that the seller is not responsible for representations made by the buyer's agent. (§ 1101.805)

QUESTION# 15      **Unit 4**

[QID: re\_question\_00067\_729.dita]

In the typical residential transaction involving an MLS-listed property and two brokers, where subagency has been offered and accepted, which agent owes primary allegiance to the buyer?

- Subagent
- Selling sales agent
- Listing broker
- **None**

The answer is none. In subagency agreements, all agents represent the seller; the buyer is therefore treated as a customer by both the listing broker and the "other broker" acting as a subagent. (§ 1101.002(8))

QUESTION# 16      **Unit 10**

[QID: re\_question\_00067\_730.dita]

A cooperating broker acting as a subagent tells a buyer that the seller is filing for divorce and for bankruptcy. This disclosure would be improper unless

- it helped the broker become a buyer's agent.
- the broker refrained from disclosing the details any further.
- **the seller authorized the release of this information.**
- the listing broker authorized the release of this information.

The answer is the seller authorized the release of this information. If the client authorized the broker to make this information available (to show willingness to accept a lower offer), then the prudent agent should get this permission in writing before making it known to buyer-customers. Such negative information could be potentially harmful to the negotiating position of the seller-client.

QUESTION# 17      **Unit 2**

[QID: re\_question\_00067\_731.dita]

A broker already representing both a buyer and a seller now seeks intermediary status. At what stage of a real estate transaction should the broker disclose the potential intermediary status?

- **Before entering into an agency relationship with each potential client**
- During closing but before the signing of final papers
- After the good-faith estimate of settlement costs is presented, but before closing
- No further disclosure needed once both clients sign the Information About Brokerage Services form

The answer is before entering into an agency relationship with each potential client. The broker should disclose the "possibility" of intermediary status at the time the buyer and the seller enter into an agency relationship with the broker and get written authorization should intermediary take place.

QUESTION# 18      **Unit 7**

[QID: re\_question\_00067\_732.dita]

A broker allows her sales associates to list their own homes through the brokerage without charging the usual listing compensation paid by the seller to the listing broker. The broker does, however, charge for the compensation to be paid to the cooperating broker. This type of agency is

- illegal under TREL.A.
- agency by ratification.
- agency by estoppel.
- **gratuitous agency.**

The answer is gratuitous agency. The agency relationship created when the broker provides brokerage services and charges no fee is known as gratuitous agency.

QUESTION# 19     **Unit 2**

[QID: re\_question\_00067\_733.dita]

Real estate sales agents

- must be sponsored by a licensed real estate broker prior to completing their education requirements and taking the state sales agent licensing examination.
- must be employed by one or more licensed real estate brokers prior to conducting any real estate activities for another person for a fee to be received now or in the future.
- **must be sponsored by a licensed real estate broker and must have received his license prior to acting as, or representing that, he is a real estate sales agent, even if he has received notification of having passed the sales agent exam. Real estate sales agents derive their authority to act on behalf of a buyer or seller client of the broker through the broker, and they do not have a contractual relationship with either a buyer or seller through the listing agreement.**
- must be sponsored by a licensed real estate broker and must have received their license prior to conducting any personal real estate investment activity.

The answer is must be sponsored by a licensed real estate broker and must have received his license prior to acting as, or representing that, he is a real estate sales agent, even if he has received notification of having passed the sales agent exam. Real estate sales agents derive their authority to act on behalf of a buyer or seller client of the broker through the broker, and they do not have a contractual relationship with either a buyer or seller through the listing agreement. The sales agent must be sure not to do any of the activities enumerated in TREL A §1101.002 for another person, in exchange for a commission or other valuable consideration or with the expectation of receiving a commission or other valuable consideration, until the sales agent has received his real estate license.

QUESTION# 20     **Unit 3**

[QID: re\_question\_00067\_734.dita]

A listing broker would be obligated to follow all of the following instructions from a seller *EXCEPT*

- show the property only on Fridays.
- conceal the suicide on the premises.
- set showing appointments with tenant during the period of the listing.
- **conceal the cracked foundation.**

The answer is conceal the cracked foundation. All agents must disclose all knowledge of any material physical problem with the property. The license holder has no duty to obey unlawful instructions. (§ 1101.652(b)(3); 22 TAC § 535.156 (d))

QUESTION# 21     **Unit 3**

[QID: re\_question\_00067\_735.dita]

A broker or sales agent owes customers

- honesty, fairness, loyalty, and financial accountability.
- honesty, full disclosure, and financial accountability.
- **honesty, fairness, and disclosure of material facts about the property.**
- fairness, disclosure of material facts about the property, and obedience.

The answer is honesty, fairness, and disclosure of material facts about the property. Financial accountability and obedience are fiduciary duties owed to clients. Therefore, the duties to customers are honesty, fairness, and disclosure.

QUESTION# 22    **Unit 10**

[QID: re\_question\_00067\_736.dita]

The initial disclosure of an agency relationship may be

- written.
- oral.
- **oral or written.**
- on the TREC form.

The answer is oral or written. Initial disclosure of an agency relationship may be made orally or in writing.

QUESTION# 23    **Unit 7**

[QID: re\_question\_00067\_737.dita]

An agency relationship would *NOT* be terminated by

- death of the principal.
- **marriage of the principal.**
- withdrawal by the principal.
- destruction of the property.

The answer is marriage of the principal. Texas recognizes that all property owned before marriage is separate property. Marriage will therefore not affect the listing except in states that recognize curtesy and dower.

QUESTION# 24    **Unit 11**

[QID: re\_question\_00067\_738.dita]

To act as an intermediary, a broker must have written consent from

- **each party being represented in the transaction.**
- the agents and all parties involved in the transaction.
- the local REALTOR<sup>®</sup> association.
- TREC.



The answer is each party being represented in the transaction. Intermediary always requires the written consent of both parties. The agents (salespeople) and the REALTOR® Association have no say in the matter and TREC is not involved in individual transactions.

QUESTION# 25     Unit 12

[QID: re\_question\_00067\_739.dita]

In the case of multiple offers being received by the broker, the listing broker must

- first present the offers produced in-house.
- **present all offers at the same time.**
- first present the offers produced by cooperating brokers.
- present all offers in the order they were received.

The answer is present all offers at the same time. All offers must be presented at the same time because sellers must make their own decision as to which offer to accept/reject. (§ 1101.557; 22 TAC §535.156)

QUESTION# 26     Unit 4

[QID: re\_question\_00067\_740.dita]

During a listing presentation to a seller, a sales agent is

- acting as an agent to the seller and must act in the best interests of the seller during the negotiations of the listing agreement.
- not an agent to anyone until the negotiations of the listing are completed and the seller has signed the listing agreement, at which time the sales agent represents the seller.
- a neutral party or mediator, negotiating the terms and conditions of the listing agreement between the seller and the broker.
- **acting as an agent to her broker and must act in the best interests of the broker during the negotiations of the listing agreement, but owes no agency duties to the seller at this time.**

The answer is acting as an agent to her broker and must act in the best interests of the broker during the negotiations of the listing agreement, but owes no agency duties to the seller at this time. Once a real estate license holder chooses a broker, under whom her license is registered with TREC, that license holder is an agent for the broker and owes fiduciary duties to that broker. When a sales agent makes a listing presentation to a seller, or a buyer representation presentation to a buyer, she does not yet owe fiduciary duties to the seller or buyer. The sales agent for the broker is a negotiator looking out for the best interests of the broker. The sales agent must deal honestly and fairly with the owner but is free, within limits, to negotiate numerous conditions of the listing that favor the broker (e.g., the price at which the firm will agree to take the listing, commissions to be paid, term of the listing, and duties to communicate all offers after the certain events occur).

QUESTION# 27     Unit 12

[QID: re\_question\_00067\_741.dita]

In the case of a second offer being received by the listing broker while the seller is awaiting a response to a counteroffer he has made to another buyer, the listing broker should

- **present the second offer immediately but instruct the seller to be careful of accepting without first withdrawing the counteroffer to the first buyer.**
- hold the second offer while the other offer is "working."
- present the second offer immediately, but instruct the seller to not accept it until the first buyer has a chance to accept the seller's counteroffer.
- tell the agent not to bring the other offer because "we have a contract working."

The answer is present the second offer immediately but instruct the seller to be careful of accepting without first withdrawing the counteroffer to the first buyer. A seller should never accept an offer while a counteroffer is outstanding because he might become party to two contracts on the same property.

QUESTION# 28      **Unit 12**

[QID: re\_question\_00067\_742.dita]

An illegal boycott has occurred when two or more business entities conspire to

- **withhold their patronage to reduce competition.**
- charge the same fees for specific services.
- allocate specific territories for marketing purposes to certain firms.
- conduct a buyout and merger transaction.

The answer is withhold their patronage to reduce competition. An illegal boycott is two or more competitors agreeing not to do business with some entity (withhold patronage) to reduce competition

QUESTION# 29      **Unit 5**

[QID: re\_question\_00067\_743.dita]

Which action of the broker is *MOST* likely to result in the creation of an agency relationship with the buyer?

- Showing the buyer an available property
- Discussing the financing alternatives available
- Transmitting the buyer's offer to the seller
- **Negotiating on the buyer's behalf**

The answer is negotiating on the buyer's behalf. Negotiating on behalf of a consumer is a client-level service, not a customer-level service.

QUESTION# 30      **Unit 12**

[QID: re\_question\_00067\_744.dita]

Actions that help reduce the risk associated with acting as a broker in a real estate transaction include all of the following *EXCEPT*

- recommending the use of other experts.
- **warranting the condition of the property.**

- using written disclosures whenever possible.
- maintaining a written policies and procedures manual.

The answer is warranting the condition of the property. All license holders should emphasize the need for consumers to use area experts for such things as surveys, title verification, loan qualifications, and identification of property defects. Be prepared to prove in a legal dispute with a consumer that important information was, in fact, provided or, on the other hand, that such disclosure was prohibited by law, by reducing as many disclosures as possible to written form. Maintaining a written policies and procedures manual is required by TREC rule. (22 TAC § 535.2(i)).

QUESTION# 31     **Unit 5**

[QID: re\_question\_00067\_745.dita]

A third party you work with but do not represent in a transaction would be referred to as a

- client.
- **customer.**
- consumer.
- service recipient.

The answer is customer. Consumer and service recipient are too general and not specific to agency. A client is the principal being represented. A customer is someone you work with but do not represent.

QUESTION# 32     **Unit 5**

[QID: re\_question\_00067\_746.dita]

Which statement by the listing broker to the buyer might lead a court to imply an agency relationship existed with the buyer?

- **"Let's test the seller with a low offer and then go up if we have to."**
- "This is a good buy."
- "Now is the time to submit an offer."
- "Let me tell you about the type of loans available at the bank today."

The answer is "Let's test the seller with a low offer and then go up if we have to." By suggesting a lower offer price, the agent is leading the buyer to believe that the agent is representing the buyer (i.e., suggesting a negotiating strategy that would favor the buyer-customer over the seller-client).

QUESTION# 33     **Unit 9**

[QID: re\_question\_00067\_747.dita]

A broker is required by TRELA to offer certain minimum services to her seller-client. Minimum service does *NOT* include

- **telling other brokers to negotiate directly with the client.**
- informing the client of material information.
- answering the client's questions.
- presenting any offer to or from the client.

The answer is telling other brokers to negotiate directly with the client. The minimum service rules specifically prohibit license holders from engaging in any activity (such as negotiating) that could violate the agency relationship between another license holder and that license holder's client. The broker cannot instruct a buyer's agent to negotiate with the broker's client. (§ 1101.557 (a) – (c); § 1101.652 (b) (22))

QUESTION# 34     **Unit 5**

[QID: re\_question\_00067\_748.dita]

When may a broker in Texas take a net listing?

- With the express written permission of the Texas Real Estate Commission
- **When a seller requires it and is familiar with market values**
- Anytime it is agreed on between a seller and broker
- Never, because net listings are unlawful in Texas

The answer is when a seller requires it and is familiar with market values. Net listings are discouraged in Texas. Two conditions are required before a broker may take a net listing. First the seller must insist upon a net listing and the seller must be familiar with market values.

QUESTION# 35     **Unit 4**

[QID: re\_question\_00067\_749.dita]

A listing agreement does not authorize a listing broker to

- place a For Sale sign on the property and advertise the property.
- **execute a document in the name of the seller concerning the property.**
- obtain information from any holder of a note secured by a lien on the property.
- place information about the property on the internet.

The answer is execute a document in the name of the seller concerning the property. A listing agreement will commonly include authorization to place a For Sale sign on the property, obtain information from lenders, and place information about the property on the internet but would rarely allow the broker to execute documents on behalf of the client.

QUESTION# 36     **Unit 3**

[QID: re\_question\_00067\_750.dita]

A listing agent would be required to disclose to a potential buyer all of the following *EXCEPT*

- Fire damage
- Termite damage
- Use of the premises for the manufacture of methamphetamines
- **The sellers are getting a divorce.**

The answer is the sellers are getting a divorce. Each of these previous defects/conditions is listed on the Sellers Disclosure of Property Condition as in need of disclosure by the seller. (TX Property Code § 5.008)

QUESTION# 37

Unit 10

[QID: re\_question\_00067\_751.dita]

A real estate broker, acting as an agent for another in a transaction, has a primary duty to

- get the transaction closed successfully.
- **represent the interests of the agent's principal.**
- help the parties reach a mutually beneficial agreement.
- treat all parties impartially.

The answer is represent the interests of the agent's principal. As an agent, the broker's primary duty is to represent the interests of the client. (22 TAC § 531.1(1))

QUESTION# 38

Unit 7

[QID: re\_question\_00067\_752.dita]

Delegation of authority by a client and acceptance of that authority by the agent

- must be in writing to create an agency relationship.
- create a power of attorney.
- **are the core requirements to create an express agency relationship.**
- create subagency.

The answer is are the core requirements to create an express agency relationship. To create an agency relationship, a principal must delegate authority to an agent (broker) and the agent must accept. It does not have to be in writing, does not create a power of attorney, and does not create subagency.

QUESTION# 39

Unit 1

[QID: re\_question\_00067\_753.dita]

Even though a broker is an agent for one party, she is obligated to treat both parties

- with loyalty.
- **fairly.**
- impartially.
- equally.

The answer is fairly. Third parties are to be treated fairly; this is not to be confused with "equally." (22 TAC § 535.1(1))

QUESTION# 40

Unit 7

[QID: re\_question\_00067\_754.dita]

The TRELA mandates that all agency agreements must include a(n)

- percentage commission fee to be paid by the client on settlement.
- "subject to prior notice" clause in the expiration section.

- expiration date with optional extensions.
- **definite termination date.**

The answer is definite termination date. TRELA requires a definite termination date that is not subject to prior notice.

QUESTION# 41      **Unit 1**      [QID: re\_question\_00067\_755.dita]

Fiduciary duties demand that an agent be

- reasonably careful in performing the agent's functions.
- loyal to the transaction by carefully disclosing all information known by the agent.
- careful to get a mutually satisfactory transaction concluded.
- **scrupulous and meticulous in performing the agent's functions.**

The answer is scrupulous and meticulous in performing the agent's functions. The agent is concerned about the transaction; however, the agent must be scrupulous and meticulous in performing the agent's function, which is to represent the interests of the client. (22 TAC § 531.1(2))

QUESTION# 42      **Unit 1**      [QID: re\_question\_00067\_756.dita]

It may be *MOST* reasonably inferred that fiduciary duties demand that a real estate broker, acting as an agent for the buyer in a real estate transaction, place

- her personal interests in the transaction below the interests of the buyer and the seller.
- **no personal interest above that of the buyer.**
- her personal interests in the transaction above the seller's interest.
- no personal interest above that of the seller.

The answer is no personal interest above that of the buyer. The duty of an agent is to place no personal interests above that of the client, whether buyer, seller, tenant, or landlord. (22 TAC § 531.1(3))

QUESTION# 43      **Unit 11**      [QID: re\_question\_00067\_757.dita]

Agents appointed to each of the parties by an intermediary broker may give

- **advice and opinions to the party to whom they are appointed.**
- confidential information about one party to the party they are working with.
- an undisclosed portion of their commission to either party to get the sale closed.
- only publicly recorded facts to the clients.

The answer is advice and opinions to the party to whom they are appointed. Agents (salespeople), once appointed by the broker, may give advice and opinions to the respective parties within certain defined limits under the law. This does not include confidential information or undisclosed rebates of commissions.

QUESTION# 44

Unit 1

[QID: re\_question\_00067\_758.dita]

One reason for an agent's obligation to exercise integrity in discharging his responsibilities is to avoid

- acts of fraud.
- prudence and caution.
- **misrepresentation.**
- referrals from clients.

The answer is misrepresentation. According to the Canons of Professional Ethics (TREC Rules), a license holder has a special obligation to exercise integrity so as to avoid misrepresentation by omission and/or commission. (22 TAC § 531.2)

QUESTION# 45

Unit 11

[QID: re\_question\_00067\_759.dita]

A misrepresentation can be made by acts of

- **commission or omission.**
- integrity or omission.
- discipline and prudence.
- prudence or caution.

The answer is commission or omission. Misrepresentation can be committed either innocently or deliberately, by either omission or commission. (22 TAC § 531.2)

QUESTION# 46

Unit 1

[QID: re\_question\_00067\_760.dita]

What is a fiduciary relationship?

- **A relationship between a principal and an agent that involves trust and confidence**
- A relationship between a broker and a customer
- The relationship between a broker and the Texas Real Estate Commission
- A contractual relationship between a principal and an agent that requires valuable consideration to be paid

The answer is a relationship between a principal and an agent that involves trust and confidence. Fiduciary is a legal relationship between a principal and an agent that assumes trust and confidence and imposes the fiduciary duties upon the agent.

QUESTION# 47

Unit 6

[QID: re\_question\_00067\_760a.dita]

A seller signed a listing agreement with a broker, giving the broker the authority to represent her in the sale of her home. In the listing agreement the seller promised to pay the broker his compensation no

matter who successfully sold her property at the price, terms, and conditions that she agreed upon. This type of listing agreement is called

- **exclusive right to sell listing agreement.**
- exclusive agency listing agreement.
- open listing agreement.
- net listing agreement.

The answer is exclusive right to sell listing agreement. The exclusive right to sell listing offers the broker the greatest amount of protection and security, and ostensibly offers the seller the greatest amount of service. Under this agreement, the broker is entitled to the contractually agreed fee or commission no matter who sells the property, even if it is the seller.

QUESTION# 48

Unit 6

[QID: re\_question\_00067\_761.dita]

A broker secures a listing to represent a seller in the sale of her home. The listing guarantees the broker payment of an agreed upon commission no matter who sells the property, with one exception. If the seller sells the property herself, the broker will not receive any compensation. This type of listing is referred to as

- an exclusive right to sell listing agreement.
- **an exclusive agency listing agreement.**
- an open listing agreement.
- a net listing agreement.

The answer is an exclusive agency listing agreement. The potential danger in using this agreement to establish an agency relationship with a seller is that, although the broker's compensation is protected if another broker brings a ready, willing, and able purchaser who successfully purchases the seller's property, the broker's compensation is not protected if the seller finds a purchaser herself.

QUESTION# 49

Unit 5

[QID: re\_question\_00067\_762.dita]

The parties to a buyer representation agreement are the

- broker's agent and the buyer-client.
- sales agent and the broker.
- broker and the co-broker.
- **broker and the buyer-client.**

The answer is the broker and the buyer-client. The parties to a buyer representation agreement are the broker (agent) and the buyer (client).

QUESTION# 50

Unit 4

[QID: re\_question\_00067\_763.dita]

The Texas Real Estate Commission is responsible for



- **the administration of TREL.A.**
- acting as arbitrator or mediator in disputes between brokers and consumers.
- regulating employment contracts between brokers and independent contractors.
- all of these.

The answer is the administration of TREL.A. TREC is tasked with the administration and enforcement of TREL.A. The purpose of TREL.A is to protect the public by regulating the actions of real estate brokers and the salespeople associated with them. TREC does not resolve disputes between license holders or the public and does not regulate a broker's business contracts with consumers or independent contractors. (§ 1101.803; 22 TAC § 535.2(a))

QUESTION# 51

**Unit 9**

[QID: re\_question\_00067\_764.dita]

TREC Rules

- require license holders to be members of the Texas Association of REALTORS® (TAR) and a local Board of REALTORS®.
- **do not require license holders to be members of trade associations.**
- require license holders to be members of the National Association of Real Estate Brokers (REALTISTS).
- require license holders to be members of the Texas Real Estate Buyer Agent's Association (TREBAA).

The answer is do not require license holders to be members of trade associations. TREC Rules do not require license holders to be a member of any organization.

QUESTION# 52

**Unit 1**

[QID: re\_question\_00067\_765.dita]

Brokers are responsible for their sales agents'

- **authorized acts.**
- responsible acts.
- authorized acts of commission.
- responsible acts of omission.

The answer is authorized acts. The sponsoring broker will generally not be held responsible under TREL.A for actions concealed from the broker (unauthorized actions) or personal actions not related to the licensing process. (22 TAC § 535.2(a); .141(c))

QUESTION# 53

**Unit 2**

[QID: re\_question\_00067\_766.dita]

A real estate agent owes what level of obligation to a client?

- **Highest fiduciary obligation**
- Highest obligation of service

- Highest obligation of equality
- Highest obligation of impartiality

The answer is highest fiduciary obligation. According to TREC Rules, the broker owes the very highest level of fiduciary responsibilities to clients. (22 TAC §535.2(b))

QUESTION# 54

Unit 6

[QID: re\_question\_00067\_767.dita]

What kind of listing agreement would obligate the seller to pay a commission to the listing broker, no matter which broker produces the buyer, but would allow the seller to pay no commission if the seller finds a buyer without any broker's participation?

- Exclusive right to sell
- Open listing
- Net listing
- **Exclusive agency**

The answer is exclusive agency. An exclusive right to sell requires the listing broker be paid even if the seller finds the buyer. An open listing allows the seller to pay a commission to any broker that procures a buyer and a net listing simply means that the seller will net x dollars from the transaction.

QUESTION# 55

Unit 6

[QID: re\_question\_00067\_768.dita]

The broker's legal and ethical obligation under a listing contract is to negotiate

- **the best possible transaction for the client.**
- a sale at the price and terms stated in the listing.
- any transaction to which she can get the seller to agree.
- only for what the seller listed the property.

The answer is the best possible transaction for the client. The broker must assist the principal in obtaining the best possible transaction for the client. As the market changes or the situation demands, the best transaction may not necessarily be the highest or the original listing price for a seller-client, or the lowest price for a buyer-client. All factors must be considered at the time an offer is rendered. (22 TAC § 535.2(b))

QUESTION# 56

Unit 2

[QID: re\_question\_00067\_769.dita]

A sales agent, acting as the agent for the buyer, takes his buyer client to see several homes currently on the market. While driving through one neighborhood, he finds a For Sale by Owner (FSBO) sign in the yard of a property that his buyer client wants to preview. The sales agent knocks on the door, introduces himself, and asks if he can preview the seller's home, but he does not give the Information About Brokerage Services form to the owner/seller.

- This is *NOT* a violation of Texas law because it is obvious to the seller that the prospective buyer is the client of the sales agent since the sales agent is previewing properties with the prospective buyer.
- **This is a violation of Texas law because the law requires that the sales agent give the Information About Brokerage Services form to prospective buyers, tenants, sellers, and landlords at the first substantive dialogue with a party to the transaction about a specific property, except in limited circumstances.**
- The IABS form does *NOT* have to be given to any party to a transaction as long as a disclosure of agency (i.e., who the sales agent is representing) is made clear to all parties, either orally or in writing, by the sales agent prior to the signing of a sales contract between the buyer and the seller.
- The IABS form is *NOT* required by law to be given by a sales agent or broker to the parties to a real estate transaction, but is a courtesy to help clarify the activities of the broker to buyers and sellers.

The answer is this is a violation of Texas law because the law requires that the sales agent give the Information About Brokerage Services form to prospective buyers, tenants, sellers, and landlords at the first substantive dialogue with a party to the transaction about a specific property, except in limited circumstances. In a limited number of circumstances, TREL A does not require the IABS form be given. TREL A 1101.558 (c) states: "A license holder is not required to provide the notice required by Subsection (b-1) if: (1) the proposed transaction is for a residential lease for less than one year and a sale is not being considered; (2) the license holder meets with a party who the license holder knows is represented by another license holder; or (3) the communication occurs at a property that is held open for any prospective buyer or tenant and the communication concerns that property."

QUESTION# 57

Unit 9

[QID: re\_question\_00067\_770.dita]

A broker advised his seller-client, who is selling his principal residence, to provide a completed Seller Disclosure Notice as required by the Texas Property Code. He should also advise the seller, that if a buyer does not receive the disclosure prior to signing a sales contract, the

- seller will be liable for any and all repairs found necessary by a licensed real estate inspector.
- seller may void the contract before expiration of the termination option if the buyer requests repairs over a specified amount.
- **contract will be voidable by the buyer for any reason at any time prior to closing if the buyer does not receive the notice.**
- buyer may terminate under the termination option and receive a refund of the option fee.

The answer is contract will be voidable by the buyer for any reason at any time prior to closing if the buyer does not receive the notice. If the required Seller Disclosure Notice is not provided to the buyer, the buyer may terminate the contract any time prior to closing.

QUESTION# 58

Unit 5

[QID: re\_question\_00067\_771.dita]

A broker who is not a REALTOR<sup>®</sup> wishes to use written contracts to establish her agency agreements with buyer-clients. The broker should

- **have a Texas attorney prepare a contract form.**
- use the TREC-promulgated buyer representation agreement.
- have a REALTOR® friend provide copies of the TAR buyer representation agreement.
- use a buyer representation agreement from another state.

The answer is have a Texas attorney prepare a contract form. TREC has no state-approved or promulgated form for listing agreements, buyer representation agreements, property management agreements, or agreements for representing more than one party. The Texas Association of REALTORS® and some local REALTORS® associations do have such forms; however, the forms are available for voluntary (not promulgated) use by their members only. Because this is a contract of employment, it is best prepared by an attorney familiar with Texas contract law.

QUESTION# 59

Unit 12

[QID: re\_question\_00067\_772.dita]

Universal agency

- gives a very specific scope of power to the agent.
- is the most common type of agency practice in real estate sales.
- is the most common type of agency given in property management.
- **gives a very broad scope of power to the agent.**

The answer is gives a very broad scope of power to the agent. The broadest scope of power is transferred through universal agency, although this type of agency is not very common in real estate transactions.

QUESTION# 60

Unit 2

[QID: re\_question\_00067\_773.dita]

The general agency relationship created by the written agreement between a broker and a sales agent establishes that

- both the broker and the sales agent owe fiduciary duties to customers.
- **the sales agent owes fiduciary duties to the broker.**
- the broker owes fiduciary duties to the sales agent.
- fiduciary duties are not applicable in general agency.

The answer is the sales agent owes fiduciary duties to the broker. The employment contract or independent contractor agreement between a broker and a sales agent establishes a fiduciary relationship between the broker and sales agent and therefore imposes the fiduciary duties on that sales agent.

QUESTION# 61

Unit 10

[QID: re\_question\_00067\_774.dita]

Price-fixing, boycotting, and allocating customers or markets are activities *MOST* relating to real estate brokerage violations of the

- **federal antitrust laws.**
- Real Estate Settlement Procedures Act.
- Texas Deceptive Trade Practices Act.
- Texas Real Estate License Act.

The answer is federal antitrust laws. These activities are specifically prohibited under antitrust law.

QUESTION# 62      **Unit 8**

[QID: re\_question\_00067\_775.dita]

During a listing presentation, the prospective seller asked the sales agent if his company's listing fee was standard in the area. Which of the following is the sales agent's *BEST* answer?

- "Yes, most firms charge the same."
- "Firms that charge less are not reputable and give very poor service."
- **"Our firm bases its fees on the services we provide."**
- "We charge the minimum allowable listing fee in this area."

The answer is "Our firm bases its fees on the services we provide." The sales agent cannot state or even imply that there is some kind of standard, normal, or generally accepted commission rate. His best answer is to say that his commission is based upon the value of his services.

QUESTION# 63      **Unit 8**

[QID: re\_question\_00067\_776.dita]

Errors and omissions insurance generally covers a broker and her associates for

- any judgments incurred for intentional violations of the TRELTA.
- **errors and mistakes made in common listing and selling activities.**
- the trebling of damages under the Texas Deceptive Trade Practices Act.
- personal injury liability and casualty occurring in the broker's office.

The answer is errors and mistakes made in common listing and selling activities. E and O is designed to cover a firm for errors or mistakes made in the normal course of business. It may, or may not, cover treble damages. E and O insurance does not cover intentional violations or personal injury.

QUESTION# 64      **Unit 9**

[QID: re\_question\_00067\_777.dita]

A broker at a listing appointment, before signing the listing contract, decides she would like to purchase property for her own use. In this case the broker must advise the seller of all the following *EXCEPT*

- that the offered price may not reflect market value.
- that the agent is acting as a principal.
- **that the agent can act as an intermediary for the seller.**
- to have an independent fee appraisal of the property.

The answer is that the agent can act as an intermediary for the seller. The broker is always suspect when purchasing property for her own portfolio; the broker should do all of these things except try to be an intermediary. (§ 1101.558(b); .652(b)(16); 22 TAC § 535.16(c))

QUESTION# 65

Unit 5

[QID: re\_question\_00067\_778.dita]

When presenting an offer to a listing agent on behalf of a buyer, the buyer's agent must *NOT*

- withhold information from the seller's agent that the buyer is willing to pay more.
- fail to include a copy of the agent's buyer representation agreement with the offer.
- fail to include a signed copy of the IABS with the offer.
- **indicate that the buyer is willing to pay more than the offer being made.**

The answer is indicate that the buyer is willing to pay more than the offer being made. A copy of the buyer rep agreement or IABS is not required to be provided to the listing agent by the buyer agent but the buyer agent must not tell the listing agent that the buyer would be willing to pay more, at least not without the expressed consent of the buyer.

QUESTION# 66

Unit 2

[QID: re\_question\_00067\_779.dita]

The nonexclusive single-agency broker would have an office policy allowing representation of each of these consumers in a transaction *EXCEPT*

- the buyer or the seller.
- **both the seller and the buyer.**
- the tenant or the landlord.
- the vendor or the vendee.

The answer is both the seller and the buyer. Nonexclusive single agency describes a form of agency whereby the broker will represent either the buyer/tenant or seller/landlord, but never both in the same transaction. "Vendee" and "vendor" are terms for buyer and seller, respectively.

QUESTION# 67

Unit 10

[QID: re\_question\_00067\_780.dita]

A listing broker need *NOT* disclose

- that a murder occurred on the premises.
- **that a registered sex offender resides next door.**
- the lack of installed, working smoke detectors on the premises.
- that the property is in the 100-year flood plain.

The answer is that a registered sex offender resides next door. Texas law exempts owners and license holders from a duty to disclose information relating to sex offenders. However, disclosure to potential buyers is mandatory regarding murder, smoke detectors, and flood plains. (Texas Property Code § 5.008)

QUESTION# 68      **Unit 10**

[QID: re\_question\_00067\_781.dita]

TRELA prohibits a license holder from

- **using her expertise to the disadvantage of a person with whom the license holder deals.**
- ever using any contract except TREC-approved forms.
- entering into a strictly oral agency agreement.
- entering into any form of dual representation agreements.

The answer is using her expertise to the disadvantage of a person with whom the license holder deals. TREC may not prohibit a license holder from using forms prepared by the property owner or those prepared by an attorney and required by the property owner. (§ 1101.155) By definition, an intermediary means a broker who is employed to negotiate a transaction between the parties and, for that purpose, is an agent of both. (§ 1101.551) TREC Rules prohibit license holders from using their expertise to the disadvantage of a consumer. (22 TAC § 535.144(b))

QUESTION# 69      **Unit 5**

[QID: re\_question\_00067\_782.dita]

A one-time showing agreement allows terms of the agreement to apply to

- any buyer.
- any agent.
- a specific agent only.
- **a specific buyer only.**

The answer is a specific buyer only. A one-time showing agreement allows the terms of the agreement to apply to a specific buyer only.

QUESTION# 70      **Unit 12**

[QID: re\_question\_00067\_783.dita]

With all proper disclosures having been made, intermediary status will occur if the buyer-client chooses to

- **make an offer on his broker's listing.**
- work directly with the firm's primary broker.
- make an offer on another firm's listing.
- make an offer on a for-sale-by-owner property.

The answer is make an offer on his broker's listing. Intermediary comes into play when a buyer the firm represents wants to make an offer on a listing held by the same firm.

QUESTION# 71      **Unit 3**

[QID: re\_question\_00067\_784.dita]

Which act could *NOT* lead to the suspension or revocation of a real estate license?

- Failure to make clear, to all parties of a transaction, for which party the license holder is acting
- **Deliberately withholding information from a buyer-client that the seller has AIDS**
- Collecting a referral fee from a carpet installer without the seller-client's consent
- Guaranteeing future profit on the sale of a property

The answer is deliberately withholding information from a buyer-client that the seller has AIDS. The Canons of Professional Ethics and Conduct (TREC Rules) prohibit license holders from disclosing information regarding AIDS. All other actions are cause for suspension or revocation of the agent's license. (§ 1101.652(b) 22 TAC § 531.19)

QUESTION# 72

Unit 2

[QID: re\_question\_00067\_785.dita]

A license holder who represents a principal in a proposed real estate transaction must disclose that representation

- **orally or in writing, whenever first coming into contact with the other party to the transaction.**
- sometime between the time the offer to purchase is accepted and closing.
- in writing, at least by the time the offer to purchase is presented.
- in writing, at the time of the first contact with another license holder representing the other party.

The answer is orally or in writing, whenever first coming into contact with the other party to the transaction. The license holder must orally or in writing let other parties or license holders know that they already represent another party to a transaction. (§ 1101.558)

QUESTION# 73

Unit 8

[QID: re\_question\_00067\_786.dita]

The initial meeting with a prospective buyer or seller in a brokerage office that practices nonexclusive single agency is *BEST* described as the

- buyer or the seller signs the listing agreement.
- broker receives an advance nonrefundable retainer fee.
- **broker counsels the buyer or the seller.**
- buyer or the seller consults the broker.

The answer is the broker counsels the buyer or the seller. The first meeting is essentially a counseling session to educate the consumer as to the agency services available. A buyer is entitled to full representation should she need or desire such client-level service. The limitations of a nonexclusive single agency office must therefore be clearly explained and understood by the consumer in order to make an informed decision. This is particularly true if the broker has numerous in-house listings that will likely meet this buyer's needs because that would increase the likelihood of the broker referring the buyer-client to another brokerage for that one transaction.

QUESTION# 74

Unit 6

[QID: re\_question\_00067\_787.dita]



In an intermediary transaction, which of these statements *FALSE*?

- **The broker may disclose confidential information.**
- The broker is an agent of the buyer.
- The broker is an agent of the seller.
- The broker must remain impartial.

The answer is the broker may disclose confidential information. The broker, acting as an intermediary, may not disclose any confidential information to either party. In an intermediary transaction, the broker is an agent of both parties; however, the statute requires the broker to act fairly and impartially on behalf of both clients. (§ 1101.559 (c))

QUESTION# 75

Unit 7

[QID: re\_question\_00067\_788.dita]

The rules of TREC are found in the

- Texas Trade Practices Act.
- Texas Occupation Code.
- **Texas Administrative Code.**
- Texas Probate Code.

The answer is Texas Administrative Code. TREC is empowered by the Texas Administrative Code (TAC) to adopt the necessary rules and regulations resulting from implementation of the legislation. The new provisions are then published at Title 22 of the TAC.

QUESTION# 76

Unit 5

[QID: re\_question\_00067\_789.dita]

The parties to the buyer representation agreement are

- the sales agent and the buyer.
- the seller and the buyer.
- the sales agent, broker and the buyer.
- **the broker and the buyer.**

The answer is the broker and the buyer. Whether the broker is creating a relationship with a seller through a listing contract or with a buyer through a buyer representation agreement, the broker is the party to the agreement, not the broker's sales agents.

QUESTION# 77

Unit 4

[QID: re\_question\_00067\_790.dita]

An agency created by the parties' actions is known as

- ratified agency.
- dual agency.

- simple agency.
- **implied agency.**

The answer is implied agency. An agency created by the parties' actions is known as an implied agency. Ratified agency is after the fact, dual agency is representing both parties and simple agency is a distractor.

QUESTION# 78

Unit 6

[QID: re\_question\_00067\_791.dita]

In an intermediary transaction, the broker may appoint

- an associate license holder to act as attorney-in-fact on behalf of each party.
- an attorney to give advice and opinions to each party.
- a broker from another firm to represent one of the parties.
- **one or more licensed associates to communicate with and carry out instruction of the parties.**

The answer is one or more licensed associates to communicate with and carry out instruction of the parties. An intermediary may appoint licensed associates within the firm to "work with, communicate with, and carry out the instructions" of the respective parties but cannot appoint an attorney-in-fact, an attorney to represent the parties, or a broker from another firm.

QUESTION# 79

Unit 10

[QID: re\_question\_00067\_792.dita]

The underlying principle found in almost all codes of ethics established by professional organizations or corporations is

- the canons of professional ethics and conduct.
- the preamble to the U.S. Constitution.
- Christian doctrine.
- **the golden rule.**

The answer is the golden rule. The basic tenet of "treating others as you would like to be treated" is found in virtually every culture, religious doctrine, and ethical and moral codes around the globe.

QUESTION# 80

Unit 8

[QID: re\_question\_00067\_793.dita]

A broker has an office policy of nonexclusive single agency and is representing a seller in the sale of his property. A buyer comes into the office and asks for representation during negotiations for the purchase of the listed property. Given the broker's office policy, which option would be available to the broker at this point?

- Agree to represent the buyer and proceed with negotiations as an intermediary.
- **Explain the office policy to the buyer and insist that he must be treated as a customer on this in-house negotiation; if the buyer insists on his need for representation, refer the buyer to another broker for representation.**

- Explain to the buyer that representation is not available to him under any circumstances in this transaction.
- Revoke the listing with the seller and agree to represent the buyer.

The answer is explain the office policy to the buyer and insist that he must be treated as a customer on this in-house negotiation; if the buyer insists on representation, refer the buyer to another broker for representation. As a nonexclusive single agent, the broker cannot offer intermediary and still maintain her policy of pure single agency (one client in a transaction). To revoke the listing with the seller to take on the buyer as a client, however, runs the risk of being sued for breach of contract by the seller. Representation is still available to the buyer, but only through another brokerage firm. The broker would be best advised to present the buyer with the statutory written notice explaining agency options (§ 1101.558(d)) and let the buyer decide which option best suits his needs: being treated as a customer by the broker or seeking representation from another brokerage firm.

QUESTION# 81

Unit 3

[QID: re\_question\_00067\_794.dita]

An example of a psychological stigma that might have an impact on the market value of a property would be

- **child molestation occurring on the property.**
- missing roof shingles.
- termite infestation.
- a cracked slab.

The answer is child molestation occurring on the property. Purely psychological stigmas are those that occur as a result of real or imagined events at the property that have no actual physical impact on the property or the occupants, such as actual or alleged child molestation.

QUESTION# 82

Unit 11

[QID: re\_question\_00067\_795.dita]

The Texas Supreme Court has ruled that for an "as is" agreement in a contract to be effective against the purchaser, it must pass several tests, which include

- all known defects must have been disclosed by the seller.
- **the "as is" agreement must stand up to all of these tests to be effective against the purchaser.**
- the seller must not have obstructed the buyer's attempts to inspect the property.
- the buyer and the seller must be in relatively equal bargaining positions.

The answer is the "as is" agreement must stand up to all of these tests to be effective against the purchaser. The Texas Supreme Court set common law precedence for an "as is" agreement to be effective against a purchaser in *The Prudential Insurance Company v. Jefferson Associates, Ltd.* (Tex., 1995) (reinforced by *Boehl v. Boley*, 2011). It must stand up to the following: all known defects must be disclosed by the seller; the seller must not obstruct the buyer's attempts to inspect; the "as is" clause must be prominent and not boilerplate; and the buyer and seller must be in relatively equal bargaining positions (i.e., similar knowledge and expertise).

QUESTION# 83

Unit 11

[QID: re\_question\_00067\_796.dita]

Unless the consumer proves that the conduct was committed knowingly or intentionally, DTPA provides that the consumer may *NOT* collect for

- **mental anguish.**
- attorney fees.
- actual damages.
- court costs.

The answer is mental anguish. Under DTPA, the consumer only has to prove the false, misleading, or fraudulent act actually occurred. The consumer would then be entitled to at least economic (actual) damages, court costs, and attorney's fees from the defendant. Although difficult to prove, consumers could be eligible for additional monetary relief for mental anguish (up to treble the actual damages) if they can prove the act was committed knowingly. If the consumer can prove the act was committed intentionally, additional punitive damages can be awarded amounting to as much as treble the actual and mental anguish award.

QUESTION# 84

Unit 11

[QID: re\_question\_00067\_797.dita]

An "unconscionable action" in the DTPA is a vague term that allows the courts to

- **use their discretion in deciding cases where persons have been tricked or swindled.**
- ignore previous DTPA cases in their decision.
- exempt real estate license holders from liability under the DTPA.
- apply strict guidelines to DTPA cases.

The answer is use their discretion in deciding cases where persons have been tricked or swindled. Unconscionable action is a form of deceit and is therefore a difficult legal concept to grasp, because it is intentionally vague. Judges prefer to look at the facts of each case and to use their discretion. *See Smith v. Levine.*

QUESTION# 85

Unit 3

[QID: re\_question\_00067\_798.dita]

A seller states that he will list the property with an associate of Eagle Realty, only if the associate does not reveal to prospective buyers that the swimming pool has a crack that the owner painted over with concrete to hide. The associate should

- take the listing as long as the crack is not visible.
- take the listing but reveal the information to prospective buyers.
- **decline the listing on behalf of Eagle Realty and refuse to work with this seller.**
- refer the seller to another sales associate in the office.

The answer is decline the listing on behalf of Eagle Realty and refuse to work with this seller. Independent of the seller's requirement to disclose, an agent has an independent duty to avoid

concealing known material facts from third parties (i.e., buyer-customers). A license holder has the duty of obedience to the client, but not if the client is asking the agent to break the law.

QUESTION# 86

Unit 4

[QID: re\_question\_00067\_799.dita]

A broker has an office agency policy of exclusive seller agency. Which *BEST* describes the broker's policy? The company policy is of

- representing sellers and buyers.
- representing buyers or sellers, but not in the same transaction.
- **representing sellers as a listing broker.**
- representing sellers as a subagent, but not as a listing agent.

The answer is representing sellers as a listing broker. Some real estate brokers have a policy of only representing sellers, which is known as exclusive seller agency. They may represent the seller as the listing broker or as a subagent of the seller through another brokerage office. If the broker office policy is that of nonexclusive single/seller agency, then the broker represents either the buyer or the seller, just not in the same transaction.

QUESTION# 87

Unit 6

[QID: re\_question\_00067\_800.dita]

The language of TREL A regarding a broker's representation of more than one party to a transaction allows for the multiple representation to commence and continue orally as long as the agreement is placed in writing before closing.

- **False, nothing allows an intermediary relationship to be maintained by oral agreement.**
- True, as long as the Information About Brokerage Services form is given on a timely basis.
- True, except the agreement must be reduced to writing before the submission of an offer.
- True, but only as long as the Information About Brokerage Services form is given and the "Owner and Buyer" box is checked.

The answer is false, nothing allows an intermediary relationship to be maintained by oral agreement. TREL A allows a broker to act as an intermediary between parties to a real estate transaction if the broker obtains written consent from each party for the broker to act as an intermediary in the transaction, and the written consent of the parties states the source of any expected compensation to the broker. Nothing allows an intermediary relationship to be maintained orally for any length of time. (§ 1101.559)

QUESTION# 88

Unit 7

[QID: re\_question\_00067\_801.dita]

Under the Texas Deceptive Trade Practices Act, an innocent misrepresentation

- **is also actionable.**
- is a violation by the seller but not the listing broker.

- does not violate the act.
- is a defense under TREC regulations.

The answer is is also actionable. Although the penalties are not the same an innocent misrepresentation is still actionable under the DTPA.

QUESTION# 89

Unit 3

[QID: re\_question\_00067\_802.dita]

A seller listed her home with a local brokerage firm. The seller tells the broker that a recent death on the property was due to natural causes, when in fact her nephew died because he was electrocuted by faulty wiring. Who is potentially liable for a civil suit under the DTPA if the broker does not disclose the death to a potential buyer?

- Only the broker
- **Only the seller**
- Both the broker and seller
- Neither

The answer is only the seller. The seller has no duty to disclose a death due to suicide, natural causes, or an accident unrelated to the property condition. (Texas Property Code § 5.008) If the death was due to natural causes, then the broker is not required to disclose the cause of death. The broker should not, therefore, be at risk for a civil suit under DTPA unless she knew the seller misrepresented the cause of death. Only the seller should be liable in this case. (DTPA § 17.46)

QUESTION# 90

Unit 9

[QID: re\_question\_00067\_803.dita]

Crucial elements of preserving independent contractor status versus employee status would include all these policies *EXCEPT*

- **the sales associate adhering to broker-required working hours.**
- the sales associate performing under the terms of a written contract between the sponsoring broker and the sales associate.
- the sales associate paying her own income taxes and Social Security.
- the sponsoring broker controlling what, but not how, services are to be performed by the sales associate.

The answer is the sales associate adhering to broker-required working hours. The broker can control what services are performed but not require certain hours worked. Withholding income and Federal Insurance Contributions Act (FICA) taxes from wages would be considered evidence of employee status.

QUESTION# 91

Unit 11

[QID: re\_question\_00067\_804.dita]

Unless a defendant is found to have acted knowingly and/or intentionally, the damages under DTPA are limited to

- mental anguish.
- treble damages.
- punitive damages.
- **economic damages.**

The answer is economic damages. Under DTPA the damages are limited to economic damages, meaning the actual money lost due to the deceptive act, unless the defendant is found to have acted knowingly or intentionally.

QUESTION# 92

Unit 9

[QID: re\_question\_00067\_805.dita]

The type of listing that places listing brokers in a position of competing with their own clients to find a buyer is

- exclusive right to sell listing.
- net listing.
- **exclusive-agency listing.**
- none of these.

The answer is exclusive-agency listing. An exclusive-agency listing allows sellers to reserve the right to sell a property themselves without obligation to pay a commission or fee, if successful. Thus, the broker is competing to find a buyer before the seller finds a buyer.

QUESTION# 93

Unit 1

[QID: re\_question\_00067\_806.dita]

An agency responsibility that requires the agent to protect the client and place the client's interests above that of the agent is known as

- **a fiduciary duty.**
- a marketing skill.
- customer service.
- conflict prevention management.

The answer is a fiduciary duty. An agent in a fiduciary relationship must put the client's interests first, above all others, even the broker's own self-interest.

QUESTION# 94

Unit 5

[QID: re\_question\_00067\_807.dita]

A property manager broker manages a large 60-unit apartment complex for the owner, who has instructed the manager to limit the leases to 120 days. In regard to providing the statutory information about brokerage services to prospective tenants, the property manager is

- exempt, because the statutory information statement does not apply to rentals.
- **exempt, because the leases are all for under the one-year statutory limit.**

- exempt, because the written statement only applies to rental properties having more than 365 units.
- not exempt and must present the written statement to all prospective tenants.

The answer is exempt, because the leases are all for under the one year statutory limit. Presentation of the statutory statement regarding brokerage roles is not required for residential leases of not more than one year unless a sale is anticipated. (§ 1101.558(c)(1))

QUESTION# 95

Unit 9

[QID: re\_question\_00067\_808.dita]

A sales associate stops by one of her vacant listings to ensure that the gardener had mowed the lawn. While there, a prospective buyer drives up, mentions that he is represented by another company in town but still would like to view the property. Before showing the listing to the prospective buyer, TRELA would require the listing sales associate to

- **verbally disclose that she represents the seller.**
- present the buyer with the written statutory information about brokerage services.
- confirm the existence of a written buyer's representation agreement with the other company before showing the property.
- all of these.

The answer is verbally disclose that she represents the seller. Oral or written disclosure of agency status is required at first contact with another party to the transaction, even if that party is represented by another license holder. (§ 1101.558 (b)) Presentation of the written statutory statement of roles that brokers may play in a transaction, however, is not required if the consumer is already represented by another license holder. (§ 1101.558(c))

QUESTION# 96

Unit 4

[QID: re\_question\_00067\_809.dita]

A new broker has received her broker's license and plans to open her own office. What option would the broker have if both parties are customers?

- Intermediary
- Exclusive single agency
- Nonexclusive single agency
- **Facilitator**

The answer is facilitator. A real estate broker who assists a buyer and seller in reaching an agreement in a real estate transaction but does not have an agency relationship with the parties is known as a facilitator. Most transactions in Texas consist of at least one of the parties with representation. A facilitator is not an agency role, because the facilitator does not offer advocacy to either side. (§ 1101.557(a); 558 (d))

QUESTION# 97

Unit 7

[QID: re\_question\_00067\_810.dita]

The duties of honesty, fairness, and disclosure of material facts about the property are owed to the



- **customer.**
- client.
- buyer.
- tenant.

The answer is customer. The duties to a customer are not fiduciary duties. They are common law duties including honesty, fairness, and disclosure.

QUESTION# 98

**Unit 2**

[QID: re\_question\_00067\_811.dita]

A buyer approaches a broker regarding purchasing a new home in the area. The broker presents the Information About Brokerage Services (IABS) form and circles "BUYER" at the bottom of the form. If the buyer signs the form, there is proof that

- the broker is now a buyer's agent.
- the broker has notified the buyer in writing that the broker does not represent the seller.
- the buyer may not be represented by this broker as an agent.
- **the buyer has been given notification in writing of various brokerage services available in Texas as required by law.**

The answer is the buyer has been given notification in writing of various brokerage services available in Texas as required by law. The purpose of the IABS form is to meet the statutory requirement for notifying consumers of roles that a broker may assume in a transaction. The consumer's signature is confirmation that they have received the statutory information. This is not a representation agreement. (§ 1101.558 (c) – (d))

QUESTION# 99

**Unit 9**

[QID: re\_question\_00067\_812.dita]

A broker with an office policy of nonexclusive single agency is similar to a broker offering intermediary services in all of these examples *EXCEPT*

- both may represent sellers.
- both may represent buyers.
- both may represent buyers or sellers.
- **both may represent buyers and sellers in the same transaction.**

The answer is both may represent buyers and sellers in the same transaction. A broker offering nonexclusive single agency never acts as an intermediary, and will therefore be providing client-level service to parties only on one side of a transaction. A nonexclusive single agent who already represents a buyer could not continue with client-level service to the buyer on an in-house transaction. The nonexclusive single agent broker who already represents a seller who is interested in buying a property may represent the seller for the listing and then represent the seller as a buyer for the purchase of a property. Finally, because brokers work "for" clients, the nonexclusive single agency broker cannot work "for" the buyer and "for" the seller in the same transaction.

QUESTION# 100

Unit 11

[QID: re\_question\_00067\_813.dita]

In the DTPA, the key to the success of a license holder's defense that the license holder relied on information from another source depends on the license holder proving

- that the license holder did not know, and could not have known, the information was false or inaccurate.
- that the license holder gave written notice to the consumer prior to closing that the license holder was relying on the written information.
- that the license holder received the information in writing.
- **all of these.**

The answer is all of these. Each is critical to the defense that the broker relied on another source.

QUESTION# 101

Unit 2

[QID: re\_question\_00067\_814.dita]

An owner of several apartment complexes hires a broker to manage her properties. The broker approves all tenants, makes decisions regarding repairs, pays all expenses for the owner, signs all rental agreements, and hires/fires all apartment employees. The relationship between the owner and the property manager is one of

- **general agency.**
- nonagency.
- special agency.
- universal agency.

The answer is general agency. A general agency relationship that frequently occurs in real estate practice is when a broker acts as a property manager for an owner. In most cases, the broker conducts a number of transactions for the owner, such as negotiating and signing lease contracts, contracting for maintenance, and initiating eviction lawsuits on behalf of the owner. In general agency, the broker has the authority to sign contractual documents (i.e., leases) and make decisions on behalf of the owner.

QUESTION# 102

Unit 11

[QID: re\_question\_00067\_815.dita]

A buyer is interested in finding a single-family residential property. One of the buyer's many requirements is that the local elementary school be a feeder school into the John Jay Middle School. A sales agent shows the buyer several properties meeting her various financial and size requirements. The buyer ultimately purchased a property but later found that the elementary school did not feed into John Jay Middle School. The sales agent does not have children and was not aware that the listing broker did not correct the MLS when the school boundaries changed in the fall. The sales agent

- **misrepresented by omission.**
- misrepresented by commission.
- misrepresented by fraud.
- did not misrepresent.

The answer is misrepresented by omission. Misrepresentation is a false statement (or nonstatement) made negligently or innocently that is a material factor in another's decision to contract. There does not have to be an intention to deceive. An element for a cause of action for fraud under the DTPA would be an intentional false representation of a material fact.

QUESTION# 103      **Unit 5**

[QID: re\_question\_00067\_816.dita]

A broker is previewing a For-Sale-by-Owner (FSBO) property to determine if it meets the requirements of her buyer-client. While touring the property with the FSBO, which statement would cause the broker to be in breach of fiduciary duty to the buyer?

- "My buyer would like to have a fenced yard for her dogs."
- **"My buyer will need you to agree to seller financing because she has a low credit score."**
- "Your asking price is slightly above the market for this area."
- "I notice there are no walk-in closets."

The answer is "My buyer will need you to agree to seller financing because she has a low credit score." A broker has a duty to investigate and research features that will be material to her client's decision to purchase, such as fenced yards and walk-in closets. The buyer may not be able to obtain a third-party loan, but advising the FSBO customer of the buyer's financial situation, in this case, weakens the buyer's negotiating position. As long as the asking price is actually above the market, then the statement actually prepares the seller for an offer below the asking price that will be more favorable to the buyer.

QUESTION# 104      **Unit 4**

[QID: re\_question\_00067\_817.dita]

The type of listing contract that guarantees the listing broker will be paid a commission if anyone, including the seller, finds a buyer for the property, is the

- **exclusive-right-to sell listing.**
- open listing.
- exclusive-agency listing.
- either the exclusive right to sell or the exclusive-agency listing.

The answer is exclusive-right-to sell listing. The exclusive right to sell listing offers the broker the greatest amount of security because the broker is entitled to the stated fee or commission no matter who eventually finds the buyer, including the seller. The exclusive-agency listing only guarantees the broker exclusivity as far as other license holders are concerned. With both an open listing and an exclusive-agency listing, the seller would not be obligated to compensate the agent if the seller finds his own buyer.

QUESTION# 105      **Unit 5**

[QID: re\_question\_00067\_818.dita]

A buyer signs an exclusive-right-to-buy agreement with a broker to be her buyer's agent and which promises a 2% commission from either the buyer or a seller if the buyer purchases a property during the period of the contract. While driving home from work, the buyer stops to preview a FSBO property.

The seller indicates that they will not pay any brokerage fees. If the buyer purchases the FSBO property, which is a *TRUE* statement?

- The broker has not earned her commission because the buyer found her own property.
- The FSBO seller must pay the buyer's commission because it is guaranteed in buyer agency contract.
- **The broker earned her commission, and the buyer is contractually bound to pay if the FSBO seller refuses.**
- Neither the FSBO seller or buyer are contractually bound to pay the broker.

The answer is the broker earned her commission, and the buyer is contractually bound to pay if the FSBO seller refuses. The advantage of a written agency contract with a buyer that is in the form of an exclusive-right-to-purchase agreement is that the broker will have earned her commission regardless of whether the broker or buyer locate the property. This type of agreement also contractually binds the buyer to paying the broker's commission if the seller refuses. If the buyer also refuses, the broker will have the right to pursue litigation against the buyer for recovery of her commission. (§ 1101.806 (b) – (c))

QUESTION# 106

Unit 6

[QID: re\_question\_00067\_819.dita]

Which of the following factual comments to the seller by the seller's appointed license holder would be permitted even without the written permission of the buyer in a fully authorized intermediary relationship with appointments?

- "The buyer would be willing to pay more than the list price if you agree to pay some of their closing costs."
- "The buyer is truly motivated to close this deal because their lease expires on their apartment in 30 days."
- **"Offering to pay some of a buyer's closing costs often encourages them to make offers closer to the asking price."**
- "This buyer must go with an FHA-insured loan because they cannot qualify for a conventional loan."

The answer is "Offering to pay some of a buyer's closing costs often encourages them to make offers closer to the asking price." Under the appointment process, the appointed license holder is the advocate of the client and, as such, may give advice and opinions that will advance that party's interest during the negotiation. [§ 1101.560(c)] TRELA prohibits both the intermediary and any appointed license holders, however, from disclosing that the buyer will pay more than the listing price, or from disclosing any other confidential personal or financial information unless given written permission to do so.

QUESTION# 107

Unit 8

[QID: re\_question\_00067\_820.dita]

A sales agent has been focusing on property management while sponsored by another broker over the last seven years. The sales agent has just received his broker's license and immediately opens his own brokerage office. Numerous license holders with whom he worked in the past approach him for sponsorship, indicating a desire to do residential and commercial sales. The new broker has little

experience in either area. Although the new broker is anxious to get started, he is particularly concerned about his limited experience in residential and commercial sales. The new broker

- would be prohibited by TREL A and TREC from offering residential and commercial services until he demonstrated competence in those areas.
- must offer the public all forms of brokerage and agency services that are authorized by TREL A.
- **should not agree to sponsor anyone until he has developed a written office policies and procedures manual.**
- cannot be held liable for any mistakes of his sponsored license holders anyway.

The answer is should not agree to sponsor anyone until he has developed a written office policies and procedures manual. At a minimum, TREC rule 22 TAC § 535.2(i) requires the broker to maintain written policies and procedures to ensure, among other things, that sponsored license holders are advised of the scope of their authorized activities and receive the necessary training. TREL A does not limit the scope of agency or areas of real estate a broker may practice; however, TREL A will hold the broker responsible for any conduct engaged in by the broker or by a sales agent associated with, or acting for, the broker (§1101.803).

QUESTION# 108

Unit 6

[QID: re\_question\_00067\_821.dita]

A broker from ABC Realty represents a buyer who wishes to negotiate on a property listed by XYZ Realty in a different real estate firm. During this transaction, which broker(s) may act as an intermediary?

- **There is no need for intermediary in this transaction**
- The broker from ABC Realty
- The broker from XYZ Realty
- Both the brokers

The answer is there is no need for intermediary in this transaction. Intermediary is an agency alternative permitting one broker to act as an agent for both a buyer-client and a seller-client in the same transaction. In this scenario, both brokers are single agents, because they each have only one client. Simply put, an intermediary is one broker with two clients.

QUESTION# 109

Unit 10

[QID: re\_question\_00067\_822.dita]

What are federal antitrust laws intended to prevent?

- Deceptive or misleading advertising
- Collecting commissions from both the buyer and seller in a transaction
- Excessive brokerage fee charges by any firm
- **The unreasonable restraint of trade**

The answer is the unreasonable restraint of trade. Antitrust law is designed to prevent the unreasonable restraint of trade. It does not deal directly with advertising and does not prohibit collecting a fee from both sides and does not set maximum fees to be charged.

QUESTION# 110

Unit 2

[QID: re\_question\_00067\_823.dita]

The Information About Brokerage Services form informs consumers

- **that they have a right to choose the type of representation they wish to receive, if any.**
- that a real estate sales agent may represent owners and buyers through agency agreements.
- that a broker may act as a dual agent between a buyer and a seller.
- of the fees charged for real estate services.

The answer is that they have a right to choose the type of representation they wish to receive, if any. The IABS informs consumers that they have the right to choose the type of representation, if any, that they wish. It does not specifically address who a broker represents in a transaction, dual agency, or fees charged.

QUESTION# 111

Unit 6

[QID: re\_question\_00067\_824.dita]

Both the buyer and seller gave written authorization for the broker to act as an intermediary but without appointments should the situation arise. The buyer expresses interest in seeing the seller's property. In regards to the intermediary transaction that now might arise, TREL A would require

- **no further notification to the parties from the broker, although it would be prudent to do so.**
- that broker immediately notify both parties in writing.
- that broker terminate at least one of the agency relationships.
- either written or verbal notification from broker to both parties.

The answer is no further notification to the parties from the broker, although it would be prudent to do so. Written consent to make appointments is a separate step from written consent for intermediary. Because the broker already has written consent to act as an intermediary, the broker or any associate of the broker's may therefore proceed with showing the in-house property to the buyer and assisting with preparing an offer to be presented to the seller. (§ 1101.559(a); .560(b)) Because intermediary without appointments precludes any preferential advice or opinion to either client, it would be prudent (though not required) for the broker to reaffirm that both clients truly understand that they will not be receiving the same level of service from the broker as when the broker acted as a single agent for either.

QUESTION# 112

Unit 2

[QID: re\_question\_00067\_825.dita]

Due to the unique nature of the fiduciary duty of obedience, a license holder has an obligation to follow an unlawful instruction of a client under which circumstance?

- Only after consulting with an attorney
- Only after the license holder has a guarantee of immunity from prosecution
- Only if the client gives the license holder a written waiver of responsibility from both parties
- **Never**

The answer is never. The agent has an obligation to follow lawful instructions of the client. Under no circumstances is an agent allowed to violate the law.

QUESTION# 113      **Unit 11**      [QID: re\_question\_00067\_826.dita]

If a license holder is found guilty of violating the DTPA, the remedies available to the court include

- **entering a financial judgment for damages against the license holder.**
- ordering a prison sentence.
- revoking the license holder's real estate license.
- ordering a criminal fine against the license holder.

The answer is entering a financial judgment for damages against the license holder. DTPA violations are considered civil not criminal cases. Civil cases can result in financial judgments but not incarceration. Only the agency that issued a professional license (in this TREC) can suspend or revoke that professional license.

QUESTION# 114      **Unit 11**      [QID: re\_question\_00067\_827.dita]

Which is *NOT* an essential element of a cause of action for fraud?

- **Mistake**
- Intent
- Damage
- Reliance

The answer is mistake. Fraud is a deceptive act practiced deliberately by one person in an attempt to gain an unfair advantage over another. Other elements include reliance on the false representation and damage as a result of the action.

QUESTION# 115      **Unit 6**      [QID: re\_question\_00067\_828.dita]

Regarding the status of an intermediary, TREC generally interprets the relationship between the broker and both clients to be one of

- facilitator.
- mediator in a negotiation between the broker's clients.
- arbitrator in a negotiation between the broker's clients.
- **agency.**

The answer is agency. A broker must agree to act as an intermediary if the broker agrees to represent a buyer or tenant and a seller or landlord in the same transaction. (§ 1101.561(b)) TREL A states that a broker who represents a party in a real estate transaction is that party's agent. (§ 1101.557(a)) A broker acting as an intermediary is therefore an agent of both parties but with different duties from those of a single agent. Mediators and arbitrators provide assistance in dispute resolution, and in that role, are not

advocates of either party to the dispute. A facilitator is a type of nonagency role permitted in some states, but it is not a role that is statutorily addressed in TRELTA.

QUESTION# 116      **Unit 12**

[QID: re\_question\_00067\_829.dita]

A tenant is looking for additional warehousing space for his auto parts store. He hires a broker to find an appropriate space within the tenant's size and financial constraints, and to help the tenant negotiate the best long-term lease possible. The agency relationship between the broker and the buyer is one of

- **special agency.**
- facilitator.
- general agency.
- intermediary.

The answer is special agency. Generally, the broker acting as a special or limited agent has no authority to sign contracts for the client, to initial changes to an offer, or to accept/reject offers. Special agents are limited to giving advice and opinion to clients who must then make their own decisions.

QUESTION# 117      **Unit 11**

[QID: re\_question\_00067\_830.dita]

Punitive damages are

- economic damages.
- actual damages.
- **punishing damages.**
- all of these are punitive damages.

The answer is punishing damages. Under DTPA, consumers may recover more than their actual losses; they also may recover punitive (punishing) damages for fraud.

QUESTION# 118      **Unit 3**

[QID: re\_question\_00067\_831.dita]

Which of these would *NOT* be categorized as a physical material fact?

- Missing roof shingles
- Termite damage
- **Missing deed in the public record**
- All are physical material facts

The answer is missing deed in the public record. Physical defects are tangible defects. As important as disclosure of the physical issues, however, are disclosures relating to the type and quality of title to be conveyed by the seller to the buyer.



QUESTION# 119      **Unit 6**

[QID: re\_question\_00067\_832.dita]

Intermediary brokerage services are

- limited to residential transactions only.
- prohibited in commercial transactions.
- prohibited in transactions involving real estate syndications and exchanges.
- **not confined to residential transactions.**

The answer is not confined to residential transactions. The representation of more than one party is not confined to residential transactions. The need for dual representation services (intermediary) can arise in all types of real estate transactions, including such areas as commercial, farm and ranch, real estate exchanges, and syndications.

QUESTION# 120      **Unit 7**

[QID: re\_question\_00067\_833.dita]

Which of the following types of contracts must have a specific termination date?

- **Buyer representation agreements and listing contracts**
- Buyer representation agreements, listing agreements, and property management agreements
- Independent contractor agreements between brokers and their associates
- All these service contracts must have definite termination dates

The answer is buyer representation agreements and listing contracts. TRELTA does not specifically address the length of time appropriate for listing or buyer representation agreements. It does, however, state that an agent may not enter into these contracts without a definite termination or expiration date that requires no action on the part of the client. There are exceptions for certain types of property management contracts. (§ 1101.652 (b) (12))

QUESTION# 121      **Unit 2**

[QID: re\_question\_00067\_834.dita]

Which offer must a listing broker submit to the seller?

- Offer submitted through a cooperating broker at \$100 less than an in-house offer
- **All of these**
- Offer for a price below the amount that the seller said was unacceptable
- Offer from a buyer who recently filed for bankruptcy

The answer is all of these. Each offer must be submitted because the license holder must convey all information that would affect the client's decision to make, accept, or reject offers. Presenting offers to a client is also required under the minimum service rules. (§ 1101.557; 22 TAC § 535.156(a))

QUESTION# 122      **Unit 1**

[QID: re\_question\_00067\_835.dita]

While the Texas Real Estate License Act (TRELA) is a statute, TREC Rules

- are guidelines and suggestions pertaining to how real estate brokers and sales agents are to carry out their daily real estate activities.
- are instrumental in explaining the conduct of a defendant license holder who is being sued for misconduct under TRELA, and the courts are subject to follow TREC Rules in a decision of the court.
- **are administrative regulations created by the real estate commission to further the purposes of and clarify TRELA, and that have the effect of law relative to license holder conduct for TREC enforcement purposes.**
- are *NOT* created by the Texas Real Estate Commission, but generated by the Broker/Lawyer Committee and submitted to the Texas Association of REALTORS® for approval by their member brokers.

The answer is are administrative regulations created by the real estate commission to further the purposes of and clarify TRELA, and that have the effect of law relative to license holder conduct for TREC enforcement purposes. TRELA gives TREC the responsibility and authority to create regulations to further the purposes of the act. TREC is also empowered to regulate and punish certain conduct by a broker or a sales agent.

QUESTION# 123

Unit 1

[QID: re\_question\_00067\_836.dita]

The sales agent for Broker A is successful in obtaining an exclusive right to sell listing agreement from a seller. The sales agent for Broker B brings his buyer client to see the listed property. During the buyer's preview of the property, the buyer's agent asks the seller's agent the following question: "Do you really think this property is worth the listed price?" The seller's agent replies: "To be honest with you, the list price is far above the current market value for homes in this area, but if your buyer will just make an offer on the property, the seller will probably take it because he must sell as quickly as possible." The listing agent

- did not violate his fiduciary duties to his seller client.
- was acting in the best interest of his seller client by trying to "get an offer" in order to begin the negotiation process and did not violate any law or rule.
- was being honest and fair with the buyer and buyer's agent by truthfully telling them that his seller's home was overpriced.
- **violated his fiduciary duty to his client by revealing confidential information, both about the pricing of the property and the seller's need to sell quickly.**

The answer is violated his fiduciary duty to his client by revealing confidential information, both about the pricing of the property and the seller's need to sell quickly.

Real estate students must study agency laws and rules so they can conduct their agency duties to clients, their non-agency duties to customers, and duties to the general public legally, accurately, and with skill. By knowing what the law says and how to apply it to real estate transactions, the real estate license holder can better serve his clients and avoid the legal consequences of misconduct.

QUESTION# 124

Unit 2

[QID: re\_question\_00067\_837.dita]

The general agency relationship created by the written agreement between a broker and a sales agent establishes that

- both the broker and the sales agent owe fiduciary duties to customers.
- the broker owes fiduciary duties to the sales agent.
- **the sales agent owes fiduciary duties to the broker.**
- fiduciary duties are not applicable in general agency.

The answer is the sales agent owes fiduciary duties to the broker. The employment contract or independent contractor agreement between a broker and a sales agent establishes a fiduciary relationship between the broker and sales agent and therefore imposes the fiduciary duties upon that sales agent.

QUESTION# 125      **Unit 1**

[QID: re\_question\_00067\_838.dita]

A person who receives limited brokerage services without establishing an agency relationship, and a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the broker, is called

- a client.
- **a customer.**
- an intermediary.
- a broker associate.

The answer is a customer. If a buyer or a seller has not established an agency relationship with a broker (i.e., the buyer or seller did not request that the broker represent her in a real estate transaction, and the broker did not consent to represent the buyer or seller), then the broker and the buyer or seller are at "arm's length" and no agency relationship has been created. In this circumstance, the broker does not owe the "customer" (whether buyer or seller) the common law duties of agency (obedience, loyalty, disclosure, confidentiality, accounting, reasonable care, and due diligence). However, the broker or sales agent does owe a customer the following: TREC Rule §156(a) states that "a license holder must deal honestly and fairly with all parties." TREC Rule §156(d) states "a license holder has a duty to convey accurate information to members of the public with whom the license holder deals."

QUESTION# 126      **Unit 12**

[QID: re\_question\_00067\_839.dita]

In the case of multiple offers being received, the listing broker should

- first present the offers produced in-house.
- first present the offers produced by cooperating brokers.
- **present them as soon as possible in each case.**
- first present the highest-priced offer, then the next-highest-priced offer, and so on.

The answer is present them as soon as possible in each case. The broker must present each offer as soon as possible, always notifying the seller that another has been received. (§ 1101.557; 22 TAC §535.156)

QUESTION# 127

Unit 12

[QID: re\_question\_00067\_840.dita]

Broker A has an exclusive right to sell listing agreement with a seller and is not functioning as an intermediary. The seller reveals to the broker that he must close on the sale of his home within the next 30 days. He asks the broker to “market the home, including pricing, for a quick sale” and gives his broker permission to reveal the 30-day urgency. Broker B brings a buyer client to see Broker A’s listed property. Broker A tells Broker B that although the home is listed for \$200,000, the seller must close the sale of his home within the next 30 days and to “make his best offer” as quickly as possible. Broker A

- **has specific instructions from the seller to “market the home, including pricing, for a quick sale” and therefore is not in violation of his fiduciary duties to the seller.**
- is in violation of his fiduciary duties to his seller client/principal by revealing confidential information to the buyer customer.
- is *NOT* in violation of TRELA because TRELA does not address this issue.
- is required by TRELA to get the seller’s instructions in writing and signed by the seller; otherwise, Broker A will be in violation of TRELA.

The answer is has specific instructions from the seller to “market the home, including pricing, for a quick sale” and therefore is not in violation of his fiduciary duties to the seller. A broker, when acting in the best interest of his seller client, is trying to obtain the best price, terms, and conditions possible for his client. When a seller client gives his broker instructions to “market the home, including price, for a quick sale,” the wise broker will get those instructions in writing and signed by the seller client.

QUESTION# 128

Unit 1

[QID: re\_question\_00067\_841.dita]

A buyer called the listing company of a property he wanted to purchase. The sales agent who listed the property showed the buyer the property and answered all of the prospective buyer’s questions. The sales agent made it clear to the prospective buyer that the agent represented the seller. The buyer later filled out a sales contract himself and took his offer to the listing agent, asking the agent to present his offer to the seller. In this scenario, the buyer is considered to be

- a client of the listing broker.
- a principal of the listing broker.
- **a customer of the listing broker.**
- in an “arm-around” relationship with the listing broker.

The answer is a customer of the listing broker. Neither the listing broker nor the sales agent of the listing broker has an agency relationship with the buyer. No buyer representation agreement was signed and no agency relationship was established through words or actions. Therefore, the buyer remains a customer and is not owed fiduciary duties.

QUESTION# 129

Unit 7

[QID: re\_question\_00067\_842.dita]

Which of the following is *NOT* a primary ingredient in the creation of an agency relationship?

- **Compensation promised by the client**
- Delegation of authority by the client
- Reliance on the agent by the client
- Control of the agent by the client

The answer is compensation promised by the client. Compensation (promised or paid) is not needed to create an agency relationship.

QUESTION# 130

Unit 2

[QID: re\_question\_00067\_843.dita]

A sales agent, acting on behalf of her broker, procures an exclusive right to sell listing agreement from a seller. The type of agency relationship that exists between the broker and sales agent is \_\_\_\_\_ and the type of agency relationship that exists between the broker and seller is \_\_\_\_\_.

- a universal agency; a general agency
- **a general agency, a special agency**
- a general agency; a universal agency
- a special agency; an intermediary agency

The answer is general agency; special agency. The authority given to a sales agent by the broker is that of a general agency and is more restrictive than the universal agency. The sales agent is authorized to conduct an ongoing series of transactions for the agent's broker/principal but is limited in the areas in which the broker is legally bound (such as being authorized in listing a house, but not in buying a car for the broker). The exclusive right to sell listing agreement spells out the areas of authority granted to the broker and the broker's agents.

QUESTION# 131

Unit 2

[QID: re\_question\_00067\_844.dita]

A real estate broker, acting as an agent for a buyer or seller in a real estate transaction under an exclusive right to sell listing agreement with the seller or a buyer representation agreement with a buyer, owes all of the following fiduciary duties to the principal *EXCEPT*

- obedience and loyalty.
- duty of full disclosure and duty to account for all monies, documents, and so on.
- confidentiality and reasonable care and due diligence.
- **duty to accomplish the sale of the seller/client's property, or duty to find an acceptable property for the buyer/client.**

The answer is duty to accomplish the sale of the seller/client's property, or duty to find an acceptable property for the buyer/client. The common law duties of an agent to a principal are: **o**bedience, **l**oyalty, **d**isclosure (full), **c**onfidentiality, **a**ccounting, and **r**easonable care and due diligence. A mnemonic device that is helpful in remembering these duties is "OLD CAR."

QUESTION# 132

Unit 9

[QID: re\_question\_00067\_845.dita]

One of the primary requirements to establish an independent contractor status as defined by IRS regulations is a

- written contract with specific commission arrangements listed.
- **written contract with a statement that the sales agent will not be treated as an employee for federal tax purposes.**
- statement of understanding defining the duties of the contractor.
- written contract and list of required duties of the contractor.

The answer is written contract with a statement that the sales agent will not be treated as an employee for federal tax purposes. A contract that clearly states that the sales agent is not an employee for tax purposes is required to establish and maintain an independent contractor agreement. A discussion of commissions or duties is not required.

QUESTION# 133

Unit 2

[QID: re\_question\_00067\_846.dita]

An unlicensed individual assisted her neighbor in the sale of her home. The unlicensed individual did not receive any compensation for marketing the neighbor's property, fielding all phone calls from prospective buyers, showing the neighbor's property, assisting the neighbor in reviewing offers, or any other activity she performed until the property was sold. The unlicensed individual

- is in violation of TRELA and must have a license to assist her neighbor whether or not she received compensation.
- is in violation of TRELA because she assisted her neighbor (another person) in the sale of her home without a license to conduct that activity.
- would *NOT* be determined to be an agent for the neighbor because she is unlicensed.
- **is *NOT* in violation of TRELA because she did not receive any form of compensation from her neighbor for any of the activities performed.**

The answer is *NOT* in violation of TRELA because she did not receive any form of compensation from her neighbor for any of the activities she performed. Except for those persons listed in §1101.005 of the act, all other persons in Texas need a broker's license to "act as broker" in a real estate transaction or to be a sales agent sponsored by a broker to conduct the activities enumerated under §1101.002 of the act. If, however, an unlicensed person is conducting "her own personal real estate transaction," she is not acting for another person and does not need a real estate license. In addition, if the unlicensed person acts for another person, but does not receive compensation of any kind, either now or in the future, the unlicensed individual is not required to hold a real estate license.

QUESTION# 134

Unit 2

[QID: re\_question\_00067\_847.dita]

A sales agent is sponsored by a licensed broker. The type of agency relationship created between the sales agent and the broker is generally

- a universal agency.
- **a general agency.**
- a special agency.
- an intermediary agency.

The answer is a general agency. General agency is the relationship that most often exists between a broker and the broker's agents (broker associates and sales agents). The broker authorizes agents to act as the broker's general agents in the course of the brokerage operations. The role of general agent allows a sales agent to actually commit the broker to an agreement with a member of the public (e.g., a listing agreement or buyer representation agreement with a seller or buyer). Generally, an independent contractor agreement clarifying the scope and authority of the associate is signed by the associate.

QUESTION# 135

**Unit 3**

[QID: re\_question\_00067\_848.dita]

A sales agent representing his seller client meets with an unrepresented prospective buyer to show the seller's property. The sales agent knows that the roof needs repairs. The sales agent, knowing that he has a duty to get the best possible price for the home on behalf of his seller client, does not tell the prospective buyer about the needed repairs.

- **Even though the sales agent has the fiduciary duty of obedience to his seller client, the agent will be held liable to "third parties" for misrepresentations and a failure to disclose certain material defects in the property that may affect the buyer's offer.**
- The sales agent owes fiduciary duties to his seller and does not owe the third-party buyer any duty that will give the buyer an advantage over his seller client.
- The seller has made it very clear that the sales agent has no authority to disclose any of the repairs needed to the property to prospective third-party buyers and the sales agent must obey his seller client's instructions.
- Unless the sales agent's broker gives him instructions to disclose the defects to the seller's property to prospective third-party buyers, the sales agent is not responsible or liable for disclosing those defects.

The answer is even though the sales agent has the fiduciary duty of obedience to his seller client, the agent will be held liable to third parties for misrepresentations and a failure to disclose certain material defects in the property that may affect the buyer's offer. TREC Rules on this issue are spelled out in TREL A §1101.652.

QUESTION# 136

**Unit 3**

[QID: re\_question\_00067\_849.dita]

Under Section 5.008 of the Texas Property Code, the statute requires a written seller's disclosure notice for most single-family residential resale properties. Which of the following is *TRUE*?

- If the statutory written seller's disclosure notice is not given to a prospective buyer at the first face-to-face meeting with the seller's sales agent, once a contract is formed, the buyer can terminate the contract for any reason within seven days after receiving the notice.
- If the statutory written seller's disclosure notice is not given to a prospective buyer no later than the first substantive dialogue between the seller and the buyer about the seller's property, the buyer can terminate the contract at any time and for any reason.

- **If the statutory written seller's disclosure notice is not delivered by the seller to the purchaser on or before the effective date of an executory contract binding the purchaser to purchase the property, the purchaser may terminate the contract for any reason within seven days after receiving the notice.**
- There is no statutory time requirement for the giving of the written seller's disclosure notice to the purchaser.

The answer is if the statutory written seller's disclosure notice is not delivered by the seller to the purchaser on or before the effective date of an executory contract binding the purchaser to purchase the property, the purchaser may terminate the contract for any reason within seven days after receiving the notice. In addition, the TREC One to Four Family Residential Contract (Resale) form addresses this issue in paragraph 7.

QUESTION# 137

Unit 3

[QID: re\_question\_00067\_850.dita]

A sales agent, acting as an agent for a buyer, assisted the buyer in writing an offer using a contract form designed by the seller's attorney. The attorney's sales contract form did not have any disclosure information specific to the right of the buyer to have an abstract covering the real estate examined by an attorney chosen by the buyer, or his right to be provided or to obtain a title insurance policy. The sales agent did not give that information in writing to his buyer client prior to or at the time of the signing of the offer. Which of the following statements is *TRUE*?

- **The sales agent is in violation of TREL A and could have his license suspended or revoked and jeopardize any earned commission.**
- If the disclosure of the right of the buyer to have the abstract examined by an attorney, or the right of the buyer to be provided or obtain a title insurance policy, is not written into the sales contract, there is no obligation of the sales agent to give that disclosure.
- The sales agent is *NOT* in violation of TREL A.
- Unless the sales agent's broker or the seller client directs the sales agent to disclose such rights, there is no obligation on the part of the sales agent to disclose that information to the buyer.

The answer is the sales agent is in violation of TREL A and could have his license suspended or revoked and jeopardize any earned commission. TREL A §1101.555 and .652(b)(29)(A) and (B) require that the broker or sales agent must advise buyers in writing before the closing of a real estate transaction that the buyer should: (A) have the abstract covering the real estate that is the subject of the contract examined by an attorney chosen by the buyer; or (B) be provided with or obtain a title insurance policy.

QUESTION# 138

Unit 3

[QID: re\_question\_00067\_851.dita]

A seller hires a broker to assist him in the sale of his home. The seller reveals to the broker that his father died from a fall from a second-story balcony that collapsed. The broker should treat this as

- a psychological stigma to the property that should be disclosed.
- **a death related to the condition of the property that should be disclosed.**
- a demographic impact to the property that does not need to be disclosed.
- a functional obsolescence of the property that must be disclosed.



The answer is a death related to the condition of the property that should be disclosed. Section 5.008(c) of the Texas Property Code states: "A seller or seller's agent shall have no duty to make a disclosure or release information related to whether a death by natural causes, suicide, or accident *unrelated to the condition of the property* occurred on the property or whether a previous occupant had, may have had, has, or may have AIDS, HIV related illnesses, or HIV infection" (emphasis added). Because the death in this case *was* related to the condition of the property, it should be disclosed.

QUESTION# 139

Unit 3

[QID: re\_question\_00067\_852.dita]

A real estate broker, when engaging in a real estate transaction on her own behalf (i.e., representing herself, not another person),

- is not obligated to inform any person with whom she deals that she holds a real estate license.
- is only obligated to inform another person that she is licensed if the other person is an unlicensed buyer or seller.
- **is obligated to inform any person with whom she deals that she is licensed and will not use her expertise to the disadvantage of a person with whom she deals.**
- is only obligated to inform another person that she is licensed if the other person is a real estate license holder.

The answer is is obligated to inform any person with whom she deals that she is licensed and will not use her expertise to the disadvantage of a person with whom she deals. TREL A makes it very clear that a licensed broker or sales agent is obligated to inform all parties to the transaction which party they are acting for. See also TREC Rule §535.144(b)&(c).

QUESTION# 140

Unit 3

[QID: re\_question\_00067\_853.dita]

A seller will be on a business trip for three weeks and requests that his sales agent contact a roofer while he is gone to make repairs to the roof of his home. The seller gives his sales agent specific instructions about the repairs and asks his sales agent to pass those instructions along to the roofer. What are the relationships of the parties in this scenario?

- The roofer is the vendor to the sales agent; the seller is the client of the sales agent; and the sales agent is the third party to the roofer.
- The roofer is a principal to the seller; the seller is the principal to the sales agent; and the sales agent is the third party to the roofer.
- The roofer is the vendor to the seller; the seller is the customer of the roofer; and the sales agent has no relationship with either the seller or the roofer when requesting the repairs of the roof.
- **The sales agent is the agent to the seller/principal; the roofer is the third-party vendor; the seller is the customer of the roofer/vendor; and the agent has no relationship to the roofer except to carry out the instructions of his seller client and remain at arm's length to the roofer.**

The answer is the sales agent is the agent to the seller/principal; the roofer is the "third party" vendor; the seller is the customer of the roofer/vendor; and the agent has no relationship to the roofer except to carry out the instructions of his seller client and remain at arm's length to the roofer. The license holder, through his broker, is an agent for the seller/client. The sales agent owes all of the fiduciary duties to his

seller/client (i.e., obedience, loyalty, [full] disclosure, confidentiality, duty to account, and reasonable care and due diligence).

QUESTION# 141

Unit 4

[QID: re\_question\_00067\_854.dita]

The seller signs a listing agreement authorizing a broker to represent him with third parties in the sale of his home. This type of agreement is characterized as

- an implied agency agreement.
- an implied agency agreement with the right of the seller to hire other brokers.
- **a written express agency agreement.**
- an oral express agency agreement.

The answer is a written express agency agreement. Written listing agreements are commonly used to establish an agency relationship between a broker and seller, and a buyer representation agreement is used to establish an agency relationship between a broker and a buyer. These agreements are designed to clarify the rights, obligations, and duties of each of the parties to the agreement.

QUESTION# 142

Unit 4

[QID: re\_question\_00067\_855.dita]

A seller signed an exclusive right to sell listing agreement with a broker. The listing agreement gives no authority to the broker to attempt to represent both the seller and prospective buyer through becoming an intermediary. Which of the following is *TRUE*?

- Since the broker is representing the seller only, the only duty the broker has to the buyer is that of a fiduciary.
- **An advantage to the seller of signing an exclusive right to sell listing agreement, without permission for an intermediary transaction, is that the broker owes fiduciary duties to the seller only, negotiates solely for the best interests of the seller, and treats all other third parties in an arm's-length relationship.**
- In exclusive representation of the seller, the broker still owes the duty of confidentiality to both the seller and the buyer. He must keep the private information of each party private and cannot share such information with the other party before, during, or after the transaction.
- An advantage to the broker, acting under an exclusive right to sell listing agreement that gives no authority to act as an intermediary, is that he must remain neutral and cannot give opinions or advice to the seller or buyer or to the sales agent of the seller or buyer.

The answer is an advantage to the seller of signing an exclusive right to sell listing agreement, without permission for an intermediary transaction, is that the broker owes fiduciary duties to the seller only, negotiates solely for the best interests of the seller, and treats all other third parties in an arm's-length relationship. Having all of the broker's knowledge and skill focused on the best interests of the seller client is a real advantage to the seller. There is no conflict of interest in the words or actions of the broker when he clearly commits to representing his seller client only.

QUESTION# 143

Unit 4

[QID: re\_question\_00067\_856.dita]

Subagency is

- **created by the mutual consent of the parties involved and may be created expressly by agreement or implicitly by words, conduct, or custom. Both the broker with the original agency agreement and the subagent broker owe the principal (whether buyer or seller) all of the fiduciary duties.**
- created by a special Subagency Agreement form that was created by TREC and is required to be signed by the parties involved. The agency duties of the subagent to the client (whether buyer or seller) only include the following: disclosure (full), accounting, and reasonable care and due diligence.
- created by mutual consent between the seller's broker and the subagent broker. The seller does not have to agree to the subagency relationship; however, the seller's broker must consent to a subagency relationship with a broker from another firm because the seller's broker has to pay the subagent compensation out of his earned compensation.
- not created by mutual consent but is a function of the actions of the subagent only. It is the decision of the subagent whether or not he represents the seller or the buyer or functions as an intermediary broker in a real estate transaction.

The answer is created by the mutual consent of the parties involved and may be created expressly by agreement or implicitly by words, conduct, or custom. Both the broker with the original agency agreement and the subagent broker owe the principal (whether buyer or seller) all of the fiduciary duties.

QUESTION# 144

Unit 4

[QID: re\_question\_00067\_857.dita]

A broker and the broker's sales agents, acting as an agent for a seller, have an obligation to disclose all of the following to a buyer *EXCEPT*

- which party the broker/sales agent is acting for in the real estate transaction.
- the fact that the seller's property was built prior to 1978 and could contain lead-based paint.
- the seller's home was tested for termites and the inspector's report shows slight damage to the southwest corner of the pier and beam foundation.
- **an appraisal, requested and paid for by the seller, shows the seller's home to be worth \$350,000 even though the seller's asking price for the home is \$390,000.**

The answer is an appraisal, requested and paid for by the seller, shows the seller's home to be worth \$350,000 even though the seller's asking price for the home is \$390,000. The agent acting on behalf of the seller has no obligation to tell a prospective buyer the appraised value of the seller's home. In fact, if he reveals that information without the permission of the seller, the seller may have grounds to sue his agent for giving confidential information to the buyer/customer or buyer's agent without permission from his seller client. The buyer certainly has the right to obtain an appraisal on the property if he desires.

QUESTION# 145

Unit 1

[QID: re\_question\_00067\_858.dita]

The Texas Real Estate License Act is

- underwritten by TREC.
- **a licensing statute.**
- under Commission Rule.
- an ethics canon.

The answer is a licensing statute. Specifically, TRELA is the law regarding the licensing of real estate sales agents and brokers.

QUESTION# 146

Unit 1

[QID: re\_question\_00067\_859.dita]

TRELA holds brokers responsible to

- **members of the public, TREC, and their clients.**
- public members of TREC and clients.
- Canons of Ethics.
- the brokers and their conscience.

The answer is members of the public, TREC, and their clients. The broker must be responsible under the law to the Commission, the public, and the broker's clients. (§ 1101.803)

QUESTION# 147

Unit 5

[QID: re\_question\_00067\_860.dita]

Once a broker has agreed to represent a buyer through the TAR Residential Buyer/Tenant Representation Agreement, the broker promises to: "(a) use broker's best efforts to assist the Client in acquiring property in the market area; (b) assist Client in negotiating the acquisition of property in the market area; and (c) comply with other provisions of the agreement." If the broker does not find a property that suits the buyer's needs prior to the expiration of the representation agreement, the buyer

- can bring a successful lawsuit against the broker for breach of his fiduciary duties because he did not find a suitable property.
- can bring a successful lawsuit against the broker under the Deceptive Trade Practices Consumer Protection Act (DTPA) and the Texas Statute of Frauds because he did not find a suitable property.
- can file a successful complaint against the broker with TREC to have the broker's license revoked because the broker did not find a suitable property.
- **cannot successfully argue that the broker breached the agreement because the broker is not obligated to find a suitable property within the time of the buyer representation agreement; he is only obligated to use his best efforts to do so.**

The answer is cannot successfully argue that the broker breached the agreement because the broker is not obligated to find a suitable property within the time of the buyer representation agreement; he is only obligated to use his best efforts to do so. A broker may be successfully sued by either a buyer or a seller for a breach of his fiduciary duties, for fraud or misrepresentation under the DTPA or the Texas Statute of Frauds, or may have complaints brought against him and filed with the TREC that result in the suspension or revocation of his license.

QUESTION# 148

Unit 5

[QID: re\_question\_00067\_861.dita]

If a broker secures a buyer representation agreement with a buyer, the broker

- is not allowed to also secure a listing agreement with a seller to represent the seller after the broker and the buyer are in the representation agreement.
- may represent both the buyer and the seller in exclusive representation through a dual agency agreement with the consent of both the buyer and the seller.
- may negotiate against his buyer client if his buyer client wants to purchase one of the broker's listings since the broker got the seller's listing before the buyer became his client.
- **is the exclusive representative of the buyer in any specific transaction, unless the buyer representation agreement authorizes the broker to become an intermediary, which allows the broker to continue to act in the transaction as the intermediary in the broker's company's listings as well as act as only the buyer's agent in other brokers' listings.**

The answer is is the exclusive representative of the buyer in any specific transaction, unless the buyer representation agreement authorizes the broker to become an intermediary, which allows the broker to continue to act in the transaction as the intermediary in the broker's company's listings as well as act as only the buyer's agent in other brokers' listings. At the time the broker and buyer sign the buyer representation agreement, the broker is representing the buyer only. Later, if the buyer desires to see, and subsequently make an offer on, one of his broker's listed properties, the broker may not act exclusively for the buyer in the negotiations.

QUESTION# 149

Unit 5

[QID: re\_question\_00067\_862.dita]

Which of the following is *NOT* one of the benefits of buyer agency to the buyer?

- A tailored buyer representation agreement specific to the needs of a buyer client.
- A stronger negotiating position and strategy for the buyer, when the agent is exclusively representing the buyer.
- No conflicts of interest when representing the buyer exclusively as opposed to the broker functioning as an intermediary with limited agency duties.
- **No requirement for confidentiality for the buyer when the broker is acting exclusively as the agent for the buyer.**

The answer is no requirement for confidentiality for the buyer when the broker is acting exclusively as the agent for the buyer. When the broker becomes the exclusive agent for a buyer, the broker views the entire transaction from the buyer's perspective, without the divided and diminished loyalty that would be demanded of an agent representing more than one party. An exclusive agent for the buyer has a duty to obtain the best price and terms possible for his buyer client.

QUESTION# 150

Unit 5

[QID: re\_question\_00067\_863.dita]

Regarding listing and buyer representation contracts in Texas and the ability of a broker to sue for his compensation, which of the following statements is *NOT* correct?

- TREL A does not require that listing contracts or buyer representation contracts be in writing.
- TREL A states that a person may not maintain an action in this state to recover a commission for the sale or purchase of real estate unless the promise or agreement on which the action is based, or a memorandum, is in writing and signed by the party against whom the action is brought or by a person authorized by that party to sign the document.
- An oral listing contract is legal in Texas but cannot be used to bring an action for collection of the license holder's commission.
- **Both oral listing contracts and written listing contracts are always enforceable by the courts in Texas.**

The answer is both oral listing contracts and written listing contracts are always enforceable by the courts in Texas. While TREL A does not require listing agreements to be in writing, it does require them to be in writing to be enforced.

QUESTION# 151

Unit 5

[QID: re\_question\_00067\_864.dita]

A buyer is seeking exclusive representation from a real estate broker in the purchase of a home. Which of the following statements is *TRUE*?

- **The broker is required to give the Information About Broker Services (IABS) form to the prospective buyer at the time of the first substantive dialogue with the party about a specific property, even if the contact is by email.**
- The broker is required to give the Information About Broker Services (IABS) form to the prospective buyer at the first face-to-face meeting at an open house.
- The broker is only required to give the Information About Broker Services (IABS) form to a prospective seller during the listing presentation, prior to the seller's signature on the agreement, and the form need not be given to a buyer.
- The Information About Broker Services (IABS) form is required to be given to both the buyer and the seller after the listing and buyer representation agreements are signed, but prior to the signing of the sales contract between the parties to the transaction.

The answer is the broker is required to give the Information About Broker Services (IABS) form to the prospective buyer at the time of the first substantive dialogue with the party about a specific property, even if the contact is by email. TREL A §1101.558(c) requires that the broker provide the buyer with the statutory written statement describing whom a license holder can represent (i.e., agent for owner [seller/landlord]; agent for buyer/tenant; or agent for both [intermediary]).

QUESTION# 152

Unit 7

[QID: re\_question\_00067\_865.dita]

A license holder holds a real estate broker license but does not wish to run her own office. She may elect to contractually obligate and subordinate herself administratively to another broker to whom she is accountable. The contractually obligated broker is generally called a

- **broker associate.**
- designated broker.

- sales agent broker.
- broker REALTOR®.

The answer is broker associate. Although not identified as such in TREL A, a broker associate is a broker associated with, and conducting business as, an agent of another broker who accepts responsibility for the broker associate's brokerage activities.

QUESTION# 153

Unit 6

[QID: re\_question\_00067\_866.dita]

On September 1, 2005, a new section was added to TREL A. Common law dual agency

- **was made legally impossible under TREL A. Brokers no longer have the choice to represent buyers and sellers as dual agents in real estate transactions.**
- was strengthened by the introduction of the requirement that real estate brokers who wish to practice common law dual agency must give full disclosure of the definition of dual agency, the ramifications for buyers and sellers who permit the broker to be a dual agent, and the requirement for the broker to get the buyer and seller to sign a written waiver allowing the broker to practice dual agency.
- was changed in TREL A and became an agency relationship referred to as *transaction broker agency*.
- was added to TREL A, allowing all licensed brokers, their sales agents, and associate brokers to act as dual agents in a real estate transaction.

The answer is was made legally impossible under TREL A. Brokers no longer have the choice to represent buyers and sellers as dual agents in real estate transactions. TREL A outlawed dual agency in 2003. Instead, TREL A § 1101.561(b) states: "A broker must agree to act as an intermediary under this subchapter if the broker agrees to represent in a transaction (1) a buyer or tenant; and (2) a seller or landlord." The license holder acting as an undisclosed dual agent could face charges of "constructive fraud" as well as loss of license.

QUESTION# 154

Unit 6

[QID: re\_question\_00067\_867.dita]

A sales agent, acting on behalf of his broker, procures a signed written listing agreement with a seller that includes permission to act as an intermediary and states the source of any expected compensation to the broker. On the same day, the sales agent procures a signed written buyer representation agreement with a buyer that includes permission to act as an intermediary and states the source of any expected compensation to the broker. The buyer asks to see the seller's property and subsequently makes an offer on that property. In this scenario

- the broker has *NOT* met the requirements of TREL A to act as an intermediary.
- **the broker has met the requirements of TREL A to act as an intermediary.**
- the broker, in order to act as an intermediary once the buyer chooses to make an offer on the seller's property, must, by law, get a second permission to act as an intermediary from both the buyer and the seller.
- this scenario does not meet the requirements for the broker to make a decision whether or not to act as an intermediary.

The answer is the broker has met the requirements of TREL A to act as an intermediary. The broker has the signed agreement of both the buyer and seller giving him permission to act as an intermediary and has stated, in writing, the source of any expected compensation to the broker in the agreements. If written permission has been granted by the buyer and seller in the listing and buyer representation agreements for the broker to act as an intermediary, and the written consent of the parties states the source of any expected compensation to the broker, the broker has met the requirements to act as an intermediary between the parties.

QUESTION# 155

Unit 6

[QID: re\_question\_00067\_868.dita]

If a broker chooses to act as an intermediary between the buyer and seller in a real estate transaction, under TREL A the intermediary broker may

- choose to continue to give opinions and advice to the buyer and seller as long as the buyer and seller are both in the same room with the intermediary broker and both hear the opinions and advice as the broker is offering it to either or both of the parties.
- give negotiating strategies concerning the sales contract on behalf of the buyer and seller, except that the broker must keep each client's strategies confidential and not share that information with the opposite party to the transaction.
- **make appointments: one sales agent to communicate with and carry out the instructions of the buyer client and one sales agent to communicate with and carry out the instructions of the seller client. Each properly appointed license holder may give advice and opinions to the party to whom she is appointed.**
- offer a price opinion to the seller at the time of listing (in fact, it is required to give a CMA or BPO at that time), and must offer a price opinion to the buyer at the time the offer is made.

The answer is make appointments: one sales agent to communicate with and carry out the instructions of the buyer client and one sales agent to communicate with and carry out the instructions of the seller client. Each properly appointed license holder may give advice and opinions to the party to whom she is appointed. The ability of the broker to make appointments is a key difference between the old, now prohibited, statutory dual agency and the current intermediary status prescribed by TREL A. Under the intermediary practice, the appointed license holders "may" (not "shall") give opinions and advice. In the intermediary transaction, if one or more license holders are appointed to the seller and one or more different license holders are appointed to the buyer, the principals are able to receive services similar to, but not the same as, those of single agency.

QUESTION# 156

Unit 6

[QID: re\_question\_00067\_869.dita]

Broker A has a small brokerage, with only one sales agent. The sales agent has procured an exclusive right to sell listing agreement with a seller. The agreement authorizes the intermediary relationship with the possibility of appointments. The sales agent has also procured a buyer representation with a prospective buyer that authorizes the intermediary relationship, with the possibility of appointments. The buyer informs her sales agent that she would like to see Broker A's listing. Broker A chooses to act as an intermediary. He appoints his sales agent to communicate with and obey the instructions of the buyer and appoints himself to communicate with and obey the instructions of the seller. Broker A



- has met the TRELTA required permission in the listing agreement and buyer representation agreement to act as an intermediary and to appoint his sales agent and himself as appointed license holders to the buyer and seller.
- has met the TRELTA required permission in the listing agreement and buyer representation agreement to act as an intermediary; however, Broker A must now have the buyer and seller sign a new listing agreement and buyer representation agreement before appointments may be made.
- **is NOT allowed, under TRELTA, to appoint himself to either the buyer or the seller, so appointments may not be made by Broker A. Broker A will act as the intermediary and his sales agent will act like the intermediary. Neither Broker A nor his sales agent may give opinions or advice to the buyer or seller.**
- is allowed by the listing agreement and the buyer representation agreement to act as an intermediary; however, the only appointment that may be made by Broker A is to appoint his sales agent to the seller, and the buyer will no longer have agency representation in the transaction.

The answer is is *NOT* allowed, under TRELTA, to appoint himself to either the buyer or the seller, so appointments may not be made by Broker A. Broker A will act as the intermediary and his sales agent will act *like* the intermediary. Neither Broker A nor his sales agent may give opinions or advice to the buyer or seller. In order for the broker to make appointments, there must be at least two additional license holders in the firm acting as agents for the broker. The broker may then appoint one of his sales agents to the seller and another sales agent to the buyer. In addition, to be able to give advice or opinions, the sales agents must have been appointed, in writing, before negotiations can begin. If the appointment happens after negotiations have begun, the appointed license holder cannot give preferential advice or opinions and must act *like* the intermediary in the transaction.

QUESTION# 157

Unit 6

[QID: re\_question\_00067\_870.dita]

A broker representing the owner of a commercial office building in the negotiations of a lease with an unrepresented prospective tenant may do all of the following *EXCEPT*

- show the property to the potential tenant and explain the terms of the lease agreement.
- negotiate the terms and conditions on behalf of the owner/landlord.
- **share with the potential tenant that the monthly lease amount is currently 20% over market rates in the area for comparable properties.**
- negotiate the lease on behalf of the owner/landlord.

The answer is share with the potential tenant that the monthly lease amount is currently 20% over market rates in the area for comparable properties. The fiduciary duties of a broker and his sales agents, when representing an owner/landlord in the lease of his commercial property, are the same as if the broker were representing the seller of a single-family home.

QUESTION# 158

Unit 6

[QID: re\_question\_00067\_871.dita]

A sales agent, through her broker, represents the seller in the sale of the seller's home through an exclusive right to sell listing agreement. After eight months of being advertised in the MLS, an unrepresented prospective buyer calls the sales agent to set an appointment to see the property.

During the showing of the property, the prospective buyer is concerned that the asking price is too high, and the sales agent responds to the buyer's concern by saying: "Don't worry; I'll get you the best deal I possibly can. The seller is eager to sell." The sales agent

- **Just placed her broker in an undisclosed dual agency position because she told the buyer she would get the buyer the best deal she possibly could, even though the sales agent, through her broker, is already the exclusive agent for the seller.**
- Acted in the best interest of her broker by making sure that the prospective buyer would not seek representation from another real estate broker.
- Did not violate any of the fiduciary duties to the seller, but instead ensured the sale of her seller/client's property by making the comment to the prospective buyer.
- Has *NOT* put her broker into an undisclosed dual agency position because the broker clearly has an exclusive right to sell listing agreement with the seller and no representation agreement with the prospective buyer; therefore, the buyer should have no expectations that he will receive any representation from the broker.

The answer is just placed her broker in an undisclosed dual agency position because she told the buyer she would get him the best deal she possibly could, even though the sales agent, through her broker, is already the exclusive agent for the seller. The sales agent is acting on behalf of her broker and, by way of the broker, is representing the interests of the seller/client. Both the sales agent and the broker may be in violation of the law by carelessly practicing dual agency, which is not allowed by TRELA and is a violation of license holders' fiduciary duties of loyalty and reasonable care. If reported to TREC for disciplinary action, such conduct would likely result in loss of license.

QUESTION# 159

Unit 7

[QID: re\_question\_00067\_872.dita]

To create an agency relationship,

- the principal and potential agent must sign a written agreement stating that one party, the principal, requests that the other party, the agent, act on her behalf with third parties in a real estate transaction, and the other party agrees to so act.
- a written promise from the principal to pay compensation must be signed by the party charged to pay the compensation, and then agreed to and signed by the potential agent.
- **there must be express mutual consent, either oral or written, between the parties. However, the consent may be deemed by the court to be implied, even if not expressed.**
- a written listing agreement or buyer representation agreement must be signed by the seller or the buyer, and then accepted and signed by the agent.

The answer is there must be express mutual consent, either oral or written, between the parties. However, the consent may be deemed by the court to be implied, even if not expressed. An agency relationship is generally created when one person (the principal) authorizes another to act on the principal's behalf and to exercise some degree of authority and discretion while acting in this capacity. The other person (the agent) must consent to do so. In most cases, the agreement must be mutual.

QUESTION# 160

Unit 7

[QID: re\_question\_00067\_873.dita]

Broker A, representing the seller, receives an inspection report from Broker B, the buyer's broker. The report reveals that the heat exchanger is defective. Which of the following is *TRUE*?

- **Once Broker A received the report from Broker B, the seller had imputed notice of the existence of the reported defect.**
- Until the seller actually receives a phone call from his broker notifying him of the existence of the report, or receives a faxed copy of the report, the seller has no notice of the existence of the report or the noted defect.
- The moment that the inspector gave the report to the buyer, the seller's agent received imputed notice of the report and the defect.
- Imputed notice does not apply in Texas.

The answer is once Broker A received the report from Broker B, the seller had imputed notice of the existence of the reported defect. Generally speaking, a principal is said to have imputed knowledge of any information that his agent possesses. However, an agent who fails to pass on significant information to his principal may be found in violation of TREL §1101.652(b)(1)&(2) regarding bad faith, untrustworthiness, dishonest dealings, and acting negligently or incompetently, and thus be subject to loss of license. Additionally, his principal, if damaged by the withholding of the information, may sue his agent.

QUESTION# 161

**Unit 7**

[QID: re\_question\_00067\_874.dita]

Which of the following is *NOT* a recognized way for an agency relationship to be terminated?

- Lapse of the time specified in the agreement
- Completion of the purpose for which the agency relationship was created
- Mutual rescission
- **Marriage of the principal**

The answer is marriage of the principal. There are numerous acceptable and legal ways to terminate the agency relationship between a broker and his agent, a broker and the seller, and a broker and the buyer. The following is a list of ways an agency can be terminated:

- Lapse of the time specified in the agreement
- Lapse of a reasonable time if no time is specified
- Completion of the purpose of the agency
- Mutual rescission
- Revocation by the principal
- Agent's renunciation of the agency
- Abandonment of the agreement by the agent
- Incapacity or death of either the agent or the principal
- Bankruptcy of the owner if title is transferred to a receiver in the bankruptcy
- Condemnation or destruction of the property
- Agent's breach of duties to the principal

QUESTION# 162

Unit 7

[QID: re\_question\_00067\_875.dita]

Broker A secured a signed exclusive right to sell listing agreement with the seller. During the time Broker A was acting as an agent for the seller, the seller revealed that he and his wife were getting a divorce and would like to set different times to sign all of the documents at the title company. A buyer purchased the property and successfully closed on the property six weeks later. Which of the following fiduciary duties survive the closing?

- The duties of obedience, loyalty, and confidentiality
- The duty of reasonable care and due diligence
- **The duty of confidentiality**
- The duties of obedience, loyalty, disclosure, and confidentiality

The answer is the duty of confidentiality. The duty of confidentiality of information remains after the termination of the agreement. A real estate agent, acting on behalf of a buyer or seller client, is prohibited from disclosing confidential information gained during the course of the agency contract and after the agency relationship is over. The divorce is confidential information and should not be disclosed by anyone in the brokerage, even if the newspapers are full of articles on the divorce. The agents are still duty bound not to discuss the confidential information of their clients, no matter how public the information is.

QUESTION# 163

Unit 8

[QID: re\_question\_00067\_876.dita]

An individual received her sales agent license without securing a sponsoring broker and left her new license on file with TREC until she found a broker who would sponsor her. Six months after she was licensed, she found a broker who invited her to join his brokerage. The sales agent signed an independent contractor agreement with the broker, who then filed a form with TREC accepting responsibility for the license holder and asked TREC to send her sales agent license to his office. The license arrived at the broker's office 10 days later. When was the newly licensed sales agent able to represent a buyer or seller in a real estate transaction?

- **After the broker agreed to sponsor the sales agent and the sales agent received her license**
- After the sales agent signed the independent contractor agreement with her broker
- Whenever the sales agent's broker determined that she had legal permission to act on behalf of a buyer or seller in a real estate transaction, whether her real estate sales agent's license had arrived or not
- As soon as the sales agent passed her Texas real estate license exam

The answer is after the broker agreed to sponsor the sales agent and the sales agent received her license. After an individual meets all of the requirements necessary to obtain a real estate sales agent's license, including passing the license exam, the newly licensed individual may not act as a sales agent or represent another person for a fee until she is sponsored by a broker and the sales agent's license is in the sales agent's possession.

QUESTION# 164

Unit 8

[QID: re\_question\_00067\_877.dita]

A broker who sponsors salespeople or is a designated broker for a business entity must maintain, on a current basis, written policies and procedures to ensure that the broker is in compliance with TREC-mandated broker responsibilities. All of the following responsibilities are mandated *EXCEPT*

- that each sponsored sales agent is advised of the scope of the sales agent's authorized activities subject to the act and is competent to conduct such activities.
- that each sponsored sales agent maintains his license in active status at all times while he is engaging in activities subject to the act.
- that any and all compensation paid to a sponsored sales agent for acts or services subject to the act is paid by, through, or with the written consent of the sponsoring broker.
- **that all listings and buyer representation agreements shall be reported to the Texas Real Estate Commission on a monthly basis and an annual report listing the entire broker's real estate activities (by month) will be submitted to TREC no later than December 31 of each year.**

The answer is that all listings and buyer representation agreements shall be reported to the Texas Real Estate Commission on a monthly basis and an annual report listing the entire broker's real estate activities (by month) will be submitted to TREC no later than December 31 of each year. The Texas Real Estate Commission regulates good practices by brokers under TREC Rule §535.2(i) Broker Responsibility.

QUESTION# 165

Unit 9

[QID: re\_question\_00067\_878.dita]

Unless there is an agreement to the contrary, the duties of a broker acting as principal to her licensed agents include

- **performance, compensation, indemnification, and reimbursement.**
- performance, compensation, provision of office space, and health insurance.
- performance, compensation, health insurance, and automobile insurance.
- none of these.

The answer is performance, compensation, indemnification, and reimbursement.

- Performance: The principal is required under this obligation to do as much as possible to ensure that the purpose for which the agency was created can be accomplished (e.g., guidance, availability to agents, clear instructions, and obedience to all laws pertaining to real estate transactions).
- Compensation: The guidelines for compensation from the broker to his sales agents are generally found in the independent contractor agreement and a memorandum of understanding. Under those guidelines, the broker has a duty to compensate his sales agents and associate brokers. Those documents will outline 1) the method and amount of payment due to the agent, 2) how the payment will be made, and 3) under what circumstances the payment is due and payable.

- Indemnification: If the agent suffers a loss because of the actions of the agent's principal broker while the agent is acting on behalf of the broker and the agent bears no responsibility for the loss, the broker may have to indemnify the agent for the loss.
- Reimbursement: Generally, if the agent has paid for expenses on behalf of the agent's broker while working within the authority of the agency relationship with the broker, the broker owes the agent reimbursement for those expenses.

QUESTION# 166

Unit 9

[QID: re\_question\_00067\_879.dita]

To ensure that his sales agents and associate brokers are not considered employees by the IRS, the broker may do all of the following *EXCEPT*

- require the sales agents and associate brokers to sign an independent contractor agreement that includes the following statement (or one similar to it): "Associate is an independent contractor and is not broker's employee. Broker will not withhold any amounts for taxes from the fees paid to associate under this agreement, unless ordered to do so by a court of law or the Internal Revenue Service. Broker will not pay any amounts for FICA, unemployment compensation, or worker's compensation for associate."
- **require each sales agent and associate broker to comply with a weekly schedule, created by the broker, outlining the following: what time the sales agents and associate brokers must arrive at the office and what time they may leave; the number of days they have "up-front desk duty" per week; how many days per month they will attend training sessions; how many "cold calls" they must make weekly; and the required weekly quota of listing agreements and buyer representation agreements for each sales agent and broker associate.**
- Require the sales agents and broker associates to sign a statement of understanding that states: "On or about the first day of \_\_\_\_\_ of each calendar year this agreement is in effect, associate will execute and deliver to broker a statement of understanding, a copy of which is attached to this independent contractor agreement."
- Require the sales agents and broker associates to sign a statement that states: "This agreement does not create a partnership between the parties. Except as provided by this agreement, neither party is liable to the other party for any expense or obligation incurred by the other party."

The answer is require each sales agent and associate broker to comply with a weekly schedule, created by the broker, outlining the following: what time the sales agents and associate brokers must arrive at the office and what time they may leave; the number of days they have "up-front desk duty" per week; how many days per month they will attend training sessions; how many "cold calls" they must make weekly; and the required weekly quota of listing agreements and buyer representation agreements for each sales agent and broker associate. One of the guidelines used to determine the difference between an employee and an independent contractor is the Internal Revenue Service's Employer's Supplemental Tax Guide. To determine whether a sales agent is an employee for Social Security, Medicare, and FUTA tax purposes, the sales agent must meet all eight elements of the statutory employee test. The IRS Statutory Employee Test can be found at <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>.

QUESTION# 167

Unit 9

[QID: re\_question\_00067\_880.dita]

A licensed broker represented a seller in a real estate transaction and charged the seller a 6% commission on the sales price of the home. After the successful conclusion of the sale, the seller refused to pay her listing broker the agreed commission. In order for the broker to sue for her commission, TRELA requires all of the following *EXCEPT*

- the broker must prove that she was duly licensed at the time the brokerage services began.
- **the broker must prove that she is a “member in good standing” of the national, state, and local association of REALTORS®.**
- the agreement for compensation be in writing and signed by the party against whom the action is brought or by a person authorized by that party to sign the document.
- at or before the time of signing the contract to purchase, the buyer was advised in writing to have an abstract of title examined by an attorney or to secure a policy of title insurance.

The answer is the broker must prove that she is a “member in good standing” of the national, state, and local association of REALTORS®. Brokers and sales agents are not required to be members of any trade association in order to act as brokers. In addition to TRELA requirements for earning a commission, there should be clear and unambiguous contractual requirements for entitlement to compensation. The Texas Association of REALTORS® Residential Real Estate Listing Agreement Exclusive Right To Sell form clarifies, under Paragraph 5, broker compensation both when the compensation is earned and when the compensation is payable.

QUESTION# 168

Unit 9

[QID: re\_question\_00067\_881.dita]

A broker secured a buyer representation agreement with an unlicensed buyer. In the buyer representation agreement, the buyer wrote into paragraph 17 the following special provision: “Broker agrees to pay Buyer at time of closing \$1,000 from Buyer’s commission.” Under TRELA, which of the following is *TRUE*?

- In Texas, the broker is *NOT* allowed to pay the \$1,000 to the buyer, because license holders are not permitted to share commissions with unlicensed buyer principals.
- **In Texas, the broker is not prohibited by TRELA or TREC from sharing any amount of his commission with an unlicensed buyer/principal.**
- In Texas, a broker is allowed to pay a buyer principal compensation, as long as the compensation is not more than \$50.
- None of these.

The answer is in Texas, the broker is not prohibited by TRELA or TREC from sharing any amount of his commission with an unlicensed buyer/principal. The prohibition of a broker not paying an unlicensed individual for a referral is still limited to a \$50 retail value gift and not any amount of cash. However, TRELA does not limit the amount a principal can receive from a broker. Other entities, (e.g., lenders, insurers, and guarantors) involved in the transaction could have serious objections to a buyer receiving any cash out of the transaction. Allowing a buyer to receive cash out of a transaction without lender approval and legal permissibility could result in federal charges of loan fraud, endangering the buyer, the broker, any other brokers involved, and the seller.

QUESTION# 169

Unit 10

[QID: re\_question\_00067\_882.dita]

If a real estate license holder violates the Rules of the Texas Real Estate Commission, she has violated

- a statutory law
- **an administrative law**
- a moral imperative
- an ethical standard

The answer is an administrative law. The state legislature is the governing body that created The Real Estate License Act (TRELA). TRELA created the Texas Real Estate Commission (TREC) and gave the commission the authority to enforce TRELA. In addition, TRELA authorized TREC to create the Rules of the Commission for the purpose of clarifying TRELA. TRELA is statutory law created by the Texas Legislature. The Rules of the Texas Real Estate Commission are administrative laws created by TREC.

QUESTION# 170

Unit 10

[QID: re\_question\_00067\_883.dita]

Although much real estate law is governed by individual states, federal legislation plays an important role in real estate practice and addresses overriding national concerns that apply in any state. Which of the following is *NOT* a federal law that addresses national concerns that apply to any state?

- The Sherman Antitrust Act
- Truth in Lending Act and Regulation Z
- Fair Housing Act of 1968
- **Occupation Code, Title 7, Section 1101**

The answer is Occupation Code, Title 7, Section 1101. This is The Real Estate License Act, a state law created by the Texas state legislature. (<http://www.statutes.legis.state.tx.us/Docs/OC/pdf/OC.1101.pdf>)

The others are federal laws that have broad application throughout all 50 states:

- The Sherman Antitrust Act (<https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws>)
- Truth in Lending Act and Regulation Z (<http://www.occ.treas.gov/topics/consumer-protection/truth-in-lending/index-truth-in-lending.html>)
- Fair Housing Act of 1968 ([http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/progdesc/title8](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/progdesc/title8))

QUESTION# 171

Unit 10

[QID: re\_question\_00067\_884.dita]

If a real estate broker or sales agent violates TRELA, the Texas Real Estate Commission (TREC) may do all of the following *EXCEPT*

- suspend the broker's license.
- **revoke the broker's membership in the National Association of REALTORS®.**
- revoke the broker's license.
- require the broker to attend additional education courses related to the violation of TRELA.

The answer is revoke the broker's membership in the National Association of REALTORS®. The consumer of the license holder's services may file a formal complaint requesting that TREC investigate the actions of the license holder, and TREC is then required to conduct an investigation. If the license



holder is found to have violated TRELA or TREC Rules, TREC may then discipline the license holder by ordering one or more of the following, depending on the violation: 1) revocation of license, 2) suspension of license, 3) probation, 4) additional education, 5) administrative fines, 6) cease and desist order, 7) reprimand, and 8) filing a criminal charge against the license holder with a district attorney.

QUESTION# 172

Unit 2

[QID: re\_question\_00067\_885.dita]

With respect to listings in most MLS systems, any commission to be paid to the other broker by a listing broker is determined by an agreement between

- the listing broker and the cooperating broker.
- the Texas Real Estate Commission (TREC) and the broker.
- the other broker and the buyer.
- **the seller and the listing broker.**

The answer is the seller and the listing broker. The seller must give authorization for the broker to share in the commission. In regard to the MLS rules, if a listing is placed in the MLS, then there must be some form of compensation to a buyer's agent; however, this is not mandated for a subagent. The TREC contract forms reference an existing agreement between the listing broker and other broker. Therefore, it is for the interest of the other broker to have a written agreement with a broker for a referral fee or if the other broker is not a member of the MLS.

QUESTION# 173

Unit 10

[QID: re\_question\_00067\_886.dita]

Broker A, when showing property to a Hispanic couple, discriminates against the couple based on race. Which of the following does *NOT* address the issue of racial discrimination?

- The Real Estate License Act (TRELA)
- The Rules of the Real Estate Commission
- The Code of Ethics
- **The Texas Statute of Frauds**

The answer is the Texas Statute of Frauds. The Texas Statute of Frauds does not address discriminatory activities of a real estate broker or sales agent. However, the following do address discriminatory activities of a licensed sales agent or broker: TRELA §1101.652(b)(32); TREC Rules §531.19; and the NAR Code of Ethics, Article 10.

QUESTION# 174

Unit 11

[QID: re\_question\_00067\_887.dita]

A sales agent made a listing presentation to a seller. During the presentation, the seller shared that there had been some settling of the foundation and there were cracks that ran through the garage and under the living room. The seller asked the sales agent to keep that information confidential, since the revelation would give any potential buyer a negotiating advantage to lower the price of the home. The sales agent assured the seller that he was obligated by his fiduciary duties to keep that information confidential. An unrepresented buyer made an appointment to see the property. The sales agent showed the property, answered the prospective buyer's questions, and kept the information about the

foundation defects confidential. Six weeks after the buyer closed on the property, he began to have problems with the foundation, found that there was \$30,000 worth of damage to the foundation, and eventually filed a lawsuit against the seller, broker, and sales agent under the Deceptive Trade Practices—Consumer Protection Act (DTPA). Which of the following is *NOT* true?

- The DTPA applies to brokers or salespeople who, knowing about property defects, fail to disclose information or make misrepresentations concerning defects in the property if the defects would affect the decision of a reasonable and prudent purchaser to buy or not to buy.
- **Regardless of the condition of the property, if the seller reveals a defect in the property, but requires the broker or sales agent to keep that information confidential, the broker and sales agent are required by their fiduciary duty of confidentiality to the client to keep the information confidential.**
- Fraud is a deceptive act practiced intentionally by one person in an attempt to gain an unfair advantage over another. In fraud cases, the plaintiff must prove an intent to deceive on the part of the defendant. If defrauded, and if the elements of a cause of action for fraud have been met, the consumer may sue the broker or sales agent under the Deceptive Trade Practices—Consumer Protection Act.
- If, 1) a material representation was made to the plaintiff by the defendant; 2) the representation was false; 3) the defendant either knew that the material representation was false or 4) made the material representation recklessly, without any knowledge of its truth; 5) the plaintiff to whom the material representation was made acted in reliance upon that representation; and 6) the plaintiff suffered injury or damage, the plaintiff may be able prove a cause of action for fraud against the defendant.

The answer is regardless of the condition of the property, if the seller reveals a defect in the property, but requires the broker or sales agent to keep that information confidential, the broker and sales agent are required by their fiduciary duty of confidentiality to the client to keep the information confidential.

QUESTION# 175

Unit 11

[QID: re\_question\_00067\_888.dita]

The DTPA is a state law that is intended to be liberally construed and applied to promote its underlying purposes, which are to protect Texas consumers against all of the following *EXCEPT*

- **personal injury.**
- false, misleading, and deceptive business practices.
- unconscionable actions.
- breaches of warranty.

The answer is personal injury. If a broker or sales agent gives false, misleading, or deceptive information to a buyer or seller, under the DTPA, the consumer of the broker's services may file a lawsuit against the broker, the sales agent, or both. License holders should pay close attention to the actions to which the exemption does not apply (DTPA §17.49[i]). In essence, license holders will not be held liable for innocent acts of omission or for advice or opinion given without an attempt to defraud or deceive.

QUESTION# 176

Unit 11

[QID: re\_question\_00067\_889.dita]

In a suit filed under the DTPA, each consumer who prevails may obtain all of the following *EXCEPT*

- economic damages, attorney fees, and court costs, as well as an additional sum of money for mental anguish if the conduct has been committed knowingly or intentionally.
- no more than three times the amount for economic damages and three times the amount for mental anguish damages if the act is committed intentionally.
- no more than three times the consumer's economic damages if the act is committed knowingly, but up to three times the economic damages plus damages for mental anguish if the act is committed intentionally.
- **economic damages, attorney fees, and court costs, but no amount of money for mental anguish.**

The answer is economic damages, attorney fees, and court costs, but no amount of money for mental anguish. Section 17.50 of the DTPA outlines relief available to consumers who have been damaged by real estate brokers or sales agents.

QUESTION# 177

Unit 11

[QID: re\_question\_00067\_890.dita]

Broker A lists a property with the information that the house is 4,000 square feet in size. She obtained the information from the Tarrant Appraisal District (TAD). She obtained it in writing and gave a copy to the buyer, who was represented by a buyer's broker. Her seller had listed the property two years before, with another broker, at which time the seller had the property appraised by a licensed appraiser. The previous listing expired without the property being sold. Broker A was given a copy of that previous appraisal by the seller, which showed the area to be 3,500 square feet. The buyer and his broker had no knowledge of the previous appraisal of 3,500 square feet. In order to more favorably compare the price per square foot with other comparable properties currently for sale, Broker A took the seller's list price and divided it by the TAD's 4,000 square feet. As a result, her seller's property appeared to be a much lower price per square foot than the comparable properties for sale. The purchaser and his broker submitted an offer of \$275,000. Upon their offer being accepted and receipt of the signed contract from the seller, Broker A then presented the buyer with the two-year-old appraisal and said, "You might want to see this." The buyer sued under DTPA and won damages. Further, the buyer filed a complaint against Broker A to TREC. TREC revoked Broker A's license for violations of TRELA. Which of the following actions should Broker A have done to limit her liability both to TREC and under the DTPA?

- Broker A should not have revealed the prior appraisal's square footage calculation, as it was out of date and not reliable, as well as being her seller's confidential information.
- Broker A should not have indicated square footage anywhere in her MLS information, website, or literature and left the buyer or his broker to go to the TAD website and get the information for themselves.
- **Broker A should have submitted, in written form, citing the sources, both the TAD recorded 4,000 square feet information and the 3,500 square feet information to the buyer or buyer's broker, allowing them to decide which information to take into consideration in their offer.**
- Broker A should not have revealed the seller's confidential appraisal from two years earlier. The TAD information was from an official source and was good enough to protect Broker A from liability under DTPA or TREC Rules.

The answer is Broker A should have submitted, in written form, citing the sources, both the TAD-recorded 4,000 square feet information and the 3,500 square feet information in the appraisal to the buyer or buyer's broker, allowing them to decide which information to take into consideration in their

offer. Broker A should not have tried to withhold the 3,500 square feet information or attempted to use only one set of square footage information to try to show that the property was a good investment. Additionally, Broker A should not have attempted to justify the value by resorting to a price per square foot analysis based on faulty square footage information. This was a violation of the DTPA §17.46(b)(24) and TRELA §1101.652(b)(1)&(2).

QUESTION# 178

Unit 12

[QID: re\_question\_00067\_891.dita]

All of the following are ways a broker can protect herself from possible lawsuits, protect herself from complaints to TREC from buyers or sellers, and manage the potential risks that accompany being an agent for a party in a real estate transaction *EXCEPT*

- clearly and accurately disclose the broker's agency relationship with one or more of the parties to the transaction, as well as the ramifications of that relationship as they pertain to the broker's buyer or seller client.
- never undertake to provide specialized professional services concerning a type of property or service that is outside the broker's field of competence, but suggest that the parties to the real estate transaction may want to engage the assistance of someone who is competent in such types of property or service (e.g., experts in repairing or evaluating foundations, electrical wiring, plumbing, air conditioning, soil evaluation, or hazardous waste).
- present a written Information About Brokerage Services form at the time of the license holder's first substantive communication with a party relating to a proposed transaction regarding a specific real property.
- **assist the seller in filling out the Seller's Disclosure of Property Condition to ensure all defects to the property are noted on the form and that the seller reveals any items that are not functioning properly to avoid any future legal action from a purchaser of the seller's property.**

The answer is assist the seller in filling out the Seller's Disclosure of Property Condition to ensure all defects to the property are noted on the form and that the seller reveals any items that are not functioning properly to avoid any future legal action from a purchaser of the seller's property. It is critical for the broker and the sales agent to comply with the disclosure of agency laws. There are few things that make a buyer or seller angrier than to find out, after they have revealed all of their personal and privileged information, that the real estate license holder was the agent of the other party and was representing the other party's interests throughout the negotiation of the transaction. Brokers should also recognize that the most frequent basis for complaints against real estate license holders is their failure to disclose material facts about their agency relationships, the condition of the property, the terms and conditions of the sale/purchase, changes in the neighborhood or zoning, or other factors that would affect their decision to sell or buy a property.

QUESTION# 179

Unit 12

[QID: re\_question\_00067\_892.dita]

A sales agent received a call at her brokerage office from a homeowner. The owner is contemplating selling his home and was given a recommendation from a friend to call the sales agent based on the excellent work the sales agent had done in selling the friend's home. The sales agent made an appointment to list the seller's home. During the process of listing the seller's home, the sales agent discussed the conditions under which she will take the listing, stated the commission percentage

charged by her broker, and answered the seller's questions. Prior to the signing of the listing, which of the following is *TRUE*?

- The sales agent is in an arm-around relationship with the seller and owes all of the fiduciary duties of an agent to her seller client/principal.
- The sales agent is acting as an agent on behalf of both the agent's broker and the seller, and she owes both her broker and the seller all of the fiduciary duties of an agent to a client/principal.
- The sales agent is solely acting in her own behalf to procure the listing, but once the listing is procured, she is acting on behalf of her broker and herself.
- **The sales agent, prior to the signing of the listing agreement by the seller, is acting on behalf of her broker/principal as a fiduciary; however, during the presentation to become a fiduciary to the seller, the sales agent must take care not to disadvantage the seller in future negotiations with a prospective purchaser (e.g., negotiating a list price that is far less than obtainable in the market in order to achieve a quick sale and a commission).**

The answer is the sales agent, prior to the signing of the listing agreement by the seller, is acting on behalf of her broker/principal as a fiduciary; however, during the presentation to become a fiduciary to the seller, the sales agent must take care not to disadvantage the seller in future negotiations with a prospective purchaser (e.g., negotiating a list price that is far less than obtainable in the market in order to achieve a quick sale and a commission). The two parties to the listing agreement are the broker and the seller. Prior to the signing of the listing agreement, they are in an arm's-length relationship, conducting the negotiations of how each will function if the agreement is signed by the seller. Once the agreement is signed, the seller and the broker are in an arm-around relationship. The broker and all of his sales agents or associate brokers now represent the seller and owe the seller all of the fiduciary responsibilities of an agent to a client/principal.

QUESTION# 180

Unit 12

[QID: re\_question\_00067\_893.dita]

Prior to a buyer representation agreement being signed, the sales agent working with a potential buyer client is required to do all of the following *EXCEPT*

- give and explain the Information About Broker Services form to the prospective buyer client.
- disclose to the buyer her agency relationship with her broker.
- negotiate the terms and conditions of the buyer representation agreement on behalf of her broker, who is in an arm's-length relationship with the potential buyer prior to the signing of the agreement.
- **represent the buyer's position and interests in the negotiation of the buyer representation agreement against the interest of the other party to the buyer representation agreement.**

The answer is represent the buyer's position and interests in the negotiation of the buyer representation agreement against the interest of the other party to the buyer representation agreement. Prior to the buyer representation agreement being signed, the sales agent represents the broker (the other party to the buyer representation agreement), and all of her fiduciary duties are owed to the broker. While all TRELAs required disclosures must be made by the sales agent, and the Information About Brokerage Services must be presented to the buyer, the sales agent will negotiate the terms and conditions of the buyer representation on behalf of her broker/principal. Once the buyer representation agreement is signed by the broker and buyer, the broker becomes the agent of the buyer client, and the sales agent then represents the buyer client through the authority of her broker.