



## Fact Sheet: Minimum Services

As you may know, in 2005 the Texas Legislature received a request from the Texas Real Estate Commission to clarify issues related to minimum duties that brokers owe to their clients. In response, the legislature amended the Real Estate License Act to clarify the minimum level of service brokers are required to provide to their clients.

### ***The Issue***

In recent years, there appeared to be a renewed interest in certain real estate brokerage models that offered menu-type services, flat-fee types of services or limited services. These models are not new, but with new technology, such as electronic transactions, these models took on a new spin. In many cases, those services were limited to listing homes on the Multiple Listing Service (MLS) or providing paperwork to clients without any support negotiating or evaluating offers. Upon first glance, this may have appeared attractive to consumers hoping to avoid paying a real estate professional to handle the sale of their home.

However, many consumers who chose to work with these limited-service brokers did not fully understand what they were buying. Once into the transaction, they realized they did not have the knowledge or experience to close the deal.

In addition, when a seller hired a limited service listing agent and if the limited service agent stated that he or she would not assist the seller in negotiations, the buyer's REALTOR® was placed in a difficult position. On one hand, the buyer's agent is obligated to represent the best interests of his or her client — which does not include counseling the seller. On the other hand, a seller working with a limited-service broker does not have the knowledge to complete the transaction. Often to close the deal, the buyer's agent was in a situation that required him or her to educate the seller about the real estate process and to provide the seller with services that the limited service agent refused to provide. This situation arose even though Texas law, for many decades, required the seller's agent to negotiate the best possible transaction for the principal. So, on one hand, the limited service agent would purport to be the exclusive agent for the seller, but on the other hand the agent refused to provide services that were clearly required under the Rules of the Texas Real Estate Commission. Also, under Texas law, a buyer's agent may not negotiate a transaction directly with the seller if the seller is exclusively represented by another broker. Under Texas law, the buyer's agent must keep the seller's agent "in the loop" during the negotiating process.

### ***The Changes***

This situation compromised the ability of REALTORS® to represent the best interests of their client and to comply with existing law. The amendment that the legislature passed requires Texas real estate brokers to provide a list of basic services to their clients. These include presenting offers from buyers to the seller and answering their clients' questions. These changes ensure that consumers understand and receive needed advice concerning one of the largest financial transactions of their lives. It also allows REALTORS® to focus on their clients and not be put into a compromising position where they must assist an inexperienced seller.



## ***What It Means***

- For REALTORS® representing sellers: You will provide a minimum level of service to clients, including presenting and accepting offers and counteroffers, assisting in developing offers and answering clients' questions. You must keep your client informed of all material information you receive, including any offers or counter offers. You may not instruct buyers' brokers to negotiate directly with the seller. You can ask the buyers' agents to deliver an offer to the seller's address or other location provided that you give such consent, you also receive a copy of the offer and you do not permit the buyers' agent to otherwise negotiate with the seller. You can still provide any level of service to the seller and charge any amount for your services (as you and seller may agree) provided you comply with these requirements.
- For REALTORS® representing buyers: When you find a home listing on the MLS, you know that the seller is exclusively represented by another broker and must respect that exclusive representation. You will know that the seller's broker must accept and communicate any offers or counter offers and must answer any of the seller's questions. If a limited service listing broker asks you to deliver an offer directly to the seller, you may do so only if you also deliver a copy to the seller's agent and do not otherwise engage in any negotiations with the seller. You must keep the seller's agent involved during any discussions or communications that constitute "negotiations." You may refuse to deliver the offer to the seller and send the offer to the limited service agent who will be required to promptly communicate it to the seller; however, both agents should work diligently to make the transaction efficient for their clients.
- For consumers: If you work with a broker to list your home on the MLS, they are also required to present and accept offers and counteroffers on your behalf, assist you in developing offers and answer your questions as part of their service to you.