



Presents:
3 Hours of Continuing Education

Contracts – The TREC Rules on
Promulgated Forms

Knowledge is the Vehicle – Service is the Goal

Serving Texas real estate licensees since 1987 with a dedication to quality real estate education.

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Introduction

Residential agents in the state of Texas are fortunate to have standardized forms to use in the vast majority of their transactions. In some states they have no such forms and consequently a great deal of time is spent (wasted?) in each transaction negotiating what contract form or forms are to be used. Lawyers are often brought in to handle this function, and although legal counsel is always a good thing for the parties to have, without some standardized forms to use as a starting point the transaction may become more complicated, lengthy, and expensive for the buyers and sellers.

Most of the TREC forms are residential in nature. Commercial real estate has too many different types of properties and entails too many variables to lend itself to standardized forms. All of TREC's forms may be found at TREC's website www.trec.texas.gov and may be downloaded from there. In addition, the Texas Real Estate License Act (TRELA) and TREC Rules may also be found there and include the rules and regulations concerning the use of the forms.

The Texas Association of Realtors® also has many forms available to members of that association and may be found at www.texasrealestate.com. In addition, TAR provides ZipForm software to its members at no charge. Our focus in this course will remain on the TREC forms.

Two contract classes have been required to obtain a real estate license in Texas since September of 2012. One in general contract law and the other specifically in the TREC forms. Although this makes a great deal of sense it is often noted that pre-license students have no real context within which to internalize the material presented. Therefore it is our hope that this workshop, taken after the agent has had some real-world experience in the marketplace, will assist the Texas agent with providing knowledgeable service to the people of Texas.

As of 2021 all license holders are required to have at least 3 hours of contracts training within their 18-hour Continuing Education for license renewal. This course qualifies for this requirement.

Part 1 – It's the Law!

Our first step is to review the provisions of the Texas Real Estate License Act and the Rules of the Texas Real Estate Commission that affect the use of our forms.

The Texas Real Estate License Act (§1101.155)

Rules Relating to Contract Forms

(a) The commission may adopt rules in the public's best interest that require license holders to use contract forms prepared by the Texas Real Estate Broker-Lawyer Committee and adopted by the commission.

(b) The commission may not prohibit a license holder from using for the sale, exchange, option, or lease of an interest in real property a contract form that is:

- (1) prepared by the property owner; or
- (2) prepared by an attorney and required by the property owner.

The Texas Real Estate License Act (§1101.652)

Grounds for Suspension or Revocation of License

(a-1) The commission may suspend or revoke a license issued under this chapter or take other disciplinary action authorized by this chapter if the license holder:

- (3) fails to use a contract form required by the commission under Section 1101.155.

(b) The commission may suspend or revoke a license issued under this chapter or take other disciplinary action authorized by this chapter if the license holder, while engaged in real estate brokerage:

- (1) acts negligently or incompetently;

The Texas Real Estate License Act (§1101.252)

Texas Real Estate Broker-Lawyer Committee – Membership

(a) The Texas Real Estate Broker-Lawyer Committee consists of 13 members appointed as follows:

- (1) six members appointed by the commission;
- (2) six members of the State Bar of Texas appointed by the president of the state bar; and
- (3) one public member appointed by the governor.

The Texas Real Estate License Act (§1101.253)

Texas Real Estate Broker-Lawyer Committee – Terms

(a) Committee members serve staggered six-year terms, with the terms of two commission appointees and two State Bar of Texas appointees expiring every two years and the term of the public member expiring every six years.

The Texas Real Estate License Act (§1101.254)

Texas Real Estate Broker-Lawyer Committee – Duties

(a) In addition to other delegated powers and duties, the committee shall draft and revise contract forms that are capable of being standardized to expedite real estate transactions and minimize controversy.

(b) The contract forms must contain safeguards adequate to protect the principals in the transaction.

**AND THAT'S ALL THE LICENSE ACT SAYS
ABOUT CONTRACTS!**

The Rules of the Texas Real Estate Commission (§537.11)

Use of Standard Contract Forms

(a) When negotiating contracts binding the sale, exchange, option, lease or rental of any interest in real property, a real estate license holder shall use only those contract forms approved for mandatory use by the Texas Real Estate Commission for that type of transaction with the following exceptions:

- (1) transactions in which the license holder is functioning solely as a principal, not as an agent;
- (2) transactions in which an agency of the United States government requires a different form to be used;
- (3) transactions for which a contract form, or addendum to a contract form, has been prepared by a property owner or prepared by a lawyer and required by a property owner; or
- (4) transactions for which no mandatory contract form or addendum has been approved by the Commission, and the license holder uses a form:
 - (A) prepared by a lawyer licensed by this state, or a trade association in consultation with one or more lawyers licensed by this state, for the particular type of transactions involved that contains:
 - (i) the name of the lawyer or trade association who prepared the form;
 - (ii) the name of the broker or trade association for whom the form was prepared;
 - (iii) the type of transaction for which the lawyer or trade association has approved the use of the form;
 - (iv) any restrictions on the use of the form; and
 - (v) if it is an addendum that changes the rights, obligations or remedies of a party under a contract or addendum form approved by the Commission for mandatory use, the form must also include:

(I) a statement about how the addendum changes the rights, obligations or remedies of a party, with a reference to the relevant paragraph number in the mandatory use form;

(II) a statement that the form is not a mandatory Texas Real Estate Commission form; and

(III) a statement that Commission rules prohibit real estate license holders from giving legal advice; or

B. prepared by the Texas Real Estate Broker-Lawyer Committee and approved by the Commission for voluntary use by license holders.

(b) A license holder may not:

(1) practice law;

(2) directly or indirectly offer, give or attempt to give legal advice;

(3) give advice or opinions as to the legal effect of any contracts or other such instruments which may affect the title to real estate;

(4) give opinions concerning the status or validity of title to real estate;

(5) draft language defining or affecting the rights, obligations or remedies of the principals of a real estate transaction, including escalation, appraisal or other contingency clauses;

(6) add factual statements or business details to a form approved by the Commission if the Commission has approved a form or addendum for mandatory use for that purpose;

(7) attempt to prevent or in any manner whatsoever discourage any principal to a real estate transaction from employing a lawyer; or

(8) employ or pay for the services of a lawyer, directly or indirectly, to represent a principal to a real estate transaction in which the license holder is acting as an agent.

(c) This section does not limit a license holder's fiduciary obligation to disclose to the license holder's principals all pertinent facts that are within the knowledge of the license holder, including such facts which might affect the status of or title to real estate.

(d) It is not the practice of law for a license holder to fill in the blanks in a contract form authorized for use by this section. A license holder shall only add factual statements and business details or shall strike text as directed in writing by the principals.

(e) This section does not prevent the license holder from explaining to the principals the meaning of the alternative choices, factual statements and business details contained in an instrument so long as the license holder does not offer or give legal advice.

(f) When a transaction involves unusual matters that should be reviewed by a lawyer before an instrument is executed, or if the instrument must be acknowledged and filed of record, the license holder shall advise the principals that each should consult a lawyer of the principal's choice before executing the instrument.

(g) A license holder may employ and pay for the services of a lawyer to represent only the license holder in a real estate transaction.

(h) A license holder shall advise the principals that the instrument they are about to execute is binding on them.

(i) Forms approved by the Commission may be reproduced only from the following sources:

(1) electronically reproduced from the files available on the Commission's website;

(2) printed copies made from copies obtained from the Commission;

(3) legible photocopies made from such copies; or

(4) computer-driven printers following these guidelines:

(A) The computer file or program containing the form text must not allow the end user direct access to the text of the form and may only permit the user to insert language in blanks in the forms. Blanks may

be scalable to accommodate the inserted language. The Commission may approve the use of a computer file or program that permits a principal of a license holder to strike through language of the form text. The program must be:

- (i) limited to use only by a principal of a transaction; and
- (ii) in a format and authenticated in manner acceptable to the Commission.

(B) Typefaces or fonts must appear to be identical to those used by the Commission in printed copies of the particular form.

(C) The text and order of the text must be identical to that used by the Commission in printed copies of the particular form.

(D) The name and address of the person or firm responsible for developing the software program must be legibly printed below the border at the bottom of each page in no less than six point type and in no larger than 10 point type.

(j) Forms approved or promulgated by the Commission must be reproduced on the same size of paper used by the Commission with the following changes or additions only:

(1) The business name or logo of a broker, organization or printer may appear at the top of a form outside the border.

(2) The broker's name may be inserted in any blank provided for that purpose.

Three Guidelines on How Not to Practice Law

1. The more you alter the forms, the more dangerous the situation becomes.
2. Do not make a statement unless you would admit it in a court of law.
3. In specific situations do not define or discuss:
 - a. rights;
 - b. remedies;
 - c. default;
 - d. validity; or
 - e. obligations (duties).

The Do's and Don'ts of Special Provisions

Real estate license holders may insert:

1. Factual statements (statements that may be verified as true)
2. Business details (details tied to something already in the contract)
3. Any wording provided by the parties or the parties' attorneys

Real estate license holders may not create wording dealing with:

1. Rights
2. Remedies
3. Default
4. Validity
5. Obligations of the parties
6. Issues already covered by a TREC form

Thirty-Eight TREC Forms (P is promulgated, A is approved)**Six Contract Forms:**

One to Four Family Residential Contract (Resale)	P
Residential Condominium Contract (Resale)	P
New Home Contract (Incomplete Construction)	P
New Home Contract (Completed Construction)	P
Farm and Ranch Contract	P
Unimproved Property Contract	P

Twenty-One Addenda:

Third Party Financing Addendum	P
Addendum for Sale of Other Property by Buyer	P
Addendum for Back-up Contract	P
Environmental Assessment, Endangered Species, & Wetlands Addendum	P
Addendum for Coastal Area Property	P
Addendum for Property Seaward of the Gulf Intracoastal Waterway	P
Seller's Temporary Residential Lease	P
Buyer's Temporary Residential Lease	P
Addendum for Reservation of Oil, Gas and Other Minerals	P
Addendum for Property Subject to Mandatory Membership in a POA	P
Seller Financing Addendum	P
Loan Assumption Addendum	P
Addendum for Release of Liability on Assumed Loan	P
Short Sale Addendum	P
Addendum for Property in a Propane Gas System Service Area	P
Addendum Concerning Right to Terminate Due to Lender's Appraisal	P
Addendum for Authorizing Hydrostatic Testing	P
Addendum for Residential Leases	P
Addendum for Fixture Leases	P
Lead-Based Paint Addendum	A
Non-Realty Items Addendum	A

Two Resale Certificates:

Subdivision Information, Including Resale Certificate for Property in a POA	P
Condominium Resale Certificate	P

Six Notices:

Information About Brokerage Services	P
Consumer Protection Notice	P
Notice of Buyer's Termination of Contract	P
Notice of Seller's Termination of Contract	P
Notice to Prospective Buyer	A
Texas Real Estate Consumer Notice Concerning Hazards or Deficiencies	A

Two Disclosures:

Disclosure of Relationship with Residential Service Company	P
Seller's Disclosure Notice	A

One Amendment:

Amendment to Contract	P
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