

# Legal Update

Part I & II  
Edition 10.0



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# Foreword

This legal update curriculum was developed by the Texas Real Estate Commission and the Texas Real Estate Research Center at Texas A&M University with the assistance of a content writing group using information from publications, presentations, and general research.

The information is believed to be reliable, but it cannot be guaranteed for any particular individual or situation. Laws and rules discussed in the textbook may have been excerpted, summarized, or abbreviated. For a complete understanding and discussion, consult a full version of any pertinent law. Information in this textbook can change periodically and is presented with the understanding that the authors and instructors are not engaged in rendering legal, accounting, or other professional advice. The services of a professional with suitable expertise should be sought.

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# Introduction

## Purpose

The purpose of Legal Update I and II is to support Texas license holder competence through the review of recent legislative and TREC rule changes, including changes to TREC promulgated contract forms. The courses include topics relevant to the current practice of real estate in Texas.

## Who Must Take This Course?

Section §535.92 of the Texas Real Estate Commission (TREC, the Commission) Rules requires all license holders to complete Legal Update I and II before renewing their license.

## Standard Test for the Course

TREC rules require a standard test, developed by TREC, to be given to all instructors and students of this course. Instructors must pass the test with a grade of 80 percent or higher to be able to teach the course [TREC Rule §535.74 (b)]. Students are given the test as part of class instruction with the correct answers reviewed by the instructor. [TREC Rule §535.72(g)].

## Regulations for License Holders

There are a number of regulations and standards that apply to real estate license holder activity. Some of the more notable include:

- \* Chapter 1101 of the Texas Occupations Code (TRELA, Act)
- \* Title 22 Texas Administrative Code, Chapters 531–543 (TREC Rules)
- \* Texas Property Code, Chapters 5, 91, 92 & 93(Landlord and Tenant)
- \* Fair Housing Act
- \* Texas Department of Insurance, Procedural Rule 53
- \* Real Estate Settlement Procedures Act (RESPA)
- \* Truth-in-Lending Act (TILA)
- \* Consumer Financial Protection Bureau rules
- \* Can-Spam Act & Federal Trade Commission Telemarketing Sales Rules (Do Not Call-Email-Fax)
- \* National Association of Realtors® (NAR) Code of Ethics (Voluntary Standard)



# Legal Update

Part I  
Edition 10.0



# Legal Update

## Part I

### Edition 10.0

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## CHAPTER

# 01

## LEGISLATIVE CHANGES AND TREC RULE UPDATES

### Learning Objectives

After this chapter, you will be able to

- Identify recent TREC rule changes that affect license holders.
- Understand legislation passed by the 2021 Texas Legislature relating to the practice of real estate.
- Provide one example of how a license holder can be involved in the TREC rule making process.



### Key TREC Rules Updates

#### **§537.20 – 537.59 Standard Contract Forms (effective 4/1/21)**

The approved amendments made changes to the standard contract forms and created two new forms. The changes to the promulgated contract forms and newly created forms are covered in detail in Chapter 2: Promulgated Contract Forms and Addenda.

#### **§535.92 - Continuing Education Requirements (effective 2/1/2021)**

The amendment requires three hours of continuing education (CE) for real estate sales agents and broker license renewals, the subject matter of which must be real estate contracts. The amendments also clarify which license holders must take the broker responsibility course and update the professional designations available through CE credit.

#### **§531.18 - Consumer Information (effective 2/1/2021)**

The amendment to the Consumer Protection Notice adds a statement to alert consumers that inspectors licensed by TREC are required to maintain errors and omissions insurance to cover losses arising from the negligent or incompetent performance of a real estate inspection. The new form number is CN 1-3 and is available at [www.trec.texas.gov](http://www.trec.texas.gov).

#### **§533.50 - Petition for Adoption of Rules (effective 5/26/2021)**

This new rule describes the process for a member of the public to petition for adoption of rules, including submission, consideration, and disposition.



## How Can a License Holder Get Involved in the Rulemaking Process?

There are many ways a license holder can get involved.

- \* Bring an item to the attention of one of the Commission's Advisory Committees or TREC staff;
- \* Attend a meeting of an advisory committee or the Commission where a specific issue of concern or rule is being discussed and provide input;
- \* Provide written comments to the Commission within 30 days after a rule is proposed but before it is adopted by using the online comment tool found on the TREC Rules web page.
- \* Attend a meeting of the Commission when a rule is going to be proposed or adopted and provide comments in person; and
- \* Attend a meeting of the Commission and give your thoughts on a new idea during the public comment on non-agenda items. The Commission can decide to send this idea to an advisory committee for exploration or put it on a future agenda for discussion and possible action.
- \* Consult §533.50 for more detailed information on TREC's process for review of proposed rules requested by members of the public

## Licensing-Related Bills Passed during the 87<sup>th</sup> Texas Legislative Session

Listed below are five bills passed by the Texas legislature in the 2021 Regular Session that license holders should be aware of.

- \* **HB 1543** *Relating to certain procedural requirements for public improvement districts and transfers property located in public improvement districts.* Effective September 1, 2021.

This bill amends the Property Code notice required for properties located in public improvement districts (PID). The notice requirements now apply to a "person who proposes to sell or otherwise convey real property" and the bill strikes language that would limit the notice requirement to not more than one dwelling unit in this state.

The bill also modifies the notice language in the statute, requiring that the notice read as outlined in the statute, and removes the allowance that a notice complies if it is "substantially similar" to the one provided by statute. The bill requires the notice be given to the prospective purchaser before execution, either

separately, as an addendum, or as a paragraph of the purchase contract, and allows that if the transaction is entered into without providing the notice, the purchaser may terminate the contract, unless the seller provides the notice at or before closing and the purchaser elects to close. The bill requires the purchaser to sign the notice and the notice must be recorded once signed. The Texas Broker-Lawyer Committee has approved a new addendum to be used by license holders when the property at issue is in a public improvement district. Additional information regarding this addendum is covered in Chapter 2 - Promulgated Contract Forms and Addenda.

- \* **HB 1560** *Relating to the continuation and functions of the Texas Department of Licensing and Regulation.* Effective September 1, 2021.

This bill moves the regulation of Residential Service Companies from TREC to the Texas Department of Licensing and Regulation.

- \* **HB 2730** *Relating to the acquisition of real property by an entity with eminent domain authority and the regulation of easement or right-of-way agents.* Effective January 1, 2022.

This bill requires TREC to establish an education program for easement/right of way agents. The bill also authorizes TREC to issue a probationary license to an applicant for an ERW registration.

- \* **SB 581** *Relating to regulation by a property owners' association of certain religious displays.* Effective May 31, 2021

This bill outlines the extent to which a property owners' association may restrict certain displays of religious items at a residence.

- \* **SB 1588** *Relating to the powers and duties of certain property owners' associations.* Effective September 1, 2021, except Section 209.004(b-1), Property Code, as added by this act, which takes effect December 1, 2021.

This bill requires TREC to establish a database available on the TREC website that requires property owners associations to submit management certificates, including amended certificates. The bill also requires those documents to be accessible to the public. SB 1588 also made changes to multiple provisions of the Texas Property Code relevant to property owners' associations, including restricted service on architectural review committees, changes to fees related to resale certificates, new requirements for association websites and publicly available documents, and bid requirements for certain service contracts. It also adds language regarding the property owners' association's authority over swimming pool enclosures and certain home security measures. This bill is discussed in more detail in Chapter 4 – Landlord-Tenant Issues & Property Management.

# PROMULGATED CONTRACT FORMS AND ADDENDA

## Learning Objectives

After this chapter, you will be able to

- Identify key changes to the One to Four Family Residential Contract Resale and additional forms.
- Describe the importance of properly using Paragraph 21 of the contract.
- Understand how to properly communicate & execute a backup offer.
- Recall issues & use of the Addendum Concerning Right to Terminate Due to Lender's Appraisal form.
- Understand the limited role of the license holder when it comes to escalation clauses and the importance of the client consulting with his or her attorney in the drafting of escalation clause language.



## Changes to Promulgated Forms

In 2020-21, the Commission adopted changes to several promulgated contract forms and created two new addenda. The adopted forms and addenda became mandatory for use on April 1, 2021. The changes described below apply to all contract forms unless specified otherwise. Paragraph numbers referenced are from the One to Four Family Residential Contract (Resale).

Below is a description of these changes with a special focus on required disclosures regarding existing leases under Paragraph 4, the two new addenda, and changes to the delivery of the option fee. These changes impact the daily practice of license holders, therefore license holders must have a clear understanding of the TREC contract forms in order to perform their duties competently. The summary below is intended to highlight some of the changes; however, copies of all forms, including tracked

changes, are available in their entirety in Appendix A. Licensing holders are responsible for understanding and utilizing all revised and new forms as applicable.

**Paragraph 2C - ACCESSORIES** was amended to add “security systems that are not fixtures.” This section also defines “Controls” to include Seller’s transferable rights to the (i) software and applications used to access and control improvements or accessories, and (ii) hardware used solely to control improvements or accessories. This change to the definition of controls contemplates both the integration of software/hardware associated with controls as technology in that area continues to expand and the necessity of transferring the rights associated with access and utilization of these controls. An example of this would be a garage door opener that uses a software/hardware system the user must have access to in order to operate the opener.

**2. PROPERTY:** The land, improvements and accessories are collectively referred to as the <sup>[2]</sup> Property<sup>[2]</sup> (Property).

- A. LAND: Lot \_\_\_\_\_ Block \_\_\_\_\_, \_\_\_\_\_ Addition, City of \_\_\_\_\_, Texas, known as \_\_\_\_\_ (address/zip code), or as described on attached exhibit.
- B. IMPROVEMENTS: The house, garage and all other fixtures and improvements attached to the above-described real property, including without limitation, the following **permanently installed and built-in items**, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas, mounts and brackets for televisions and speakers, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property ~~[owned by Seller and]~~ attached to the above described real property.
- C. ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, security systems that are not fixtures, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and accessories. “Controls” includes Seller’s transferable rights to the (i) software and applications used to access and control improvements or accessories, and (ii) hardware used solely to control improvements or accessories.
- D. EXCLUSIONS: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession: \_\_\_\_\_.
- E. RESERVATIONS: Any reservation for oil, gas, or other minerals, water, timber, or other interests is made in accordance with an attached addendum.

#### Paragraph 4 - LEASES

Paragraph 4 was re-written to address existing leases on the property. These changes mean the listing agent will need to work with their client upfront to make sure the appropriate boxes are checked regarding any existing leases on the property and to make them available when necessary. Paragraphs 4.A. and 4.B. require use of the Addendum Regarding Residential Leases and the

Addendum Regarding Fixture Leases, respectively. More information will be provided regarding these addendums later in this chapter. Paragraph 4.C. addresses the disclosure of Natural Resources Leases. It defines “Natural Resource Lease” as an oil and gas, mineral, water, wind, or other natural resource lease affecting the property to which the seller is a party. In the event the seller has not already provided the buyer with a copy of all relevant natural resource leases, the seller must provide them

**4. LEASES:** Except as disclosed in this contract, Seller is not aware of any leases affecting the Property. After the Effective Date, Seller may not, without Buyer's written consent, create a new lease, amend any existing lease, or convey any interest in the Property. (Check all applicable boxes)

- A. RESIDENTIAL LEASES: The Property is subject to one or more residential leases and the Addendum Regarding Residential Leases is attached to this contract.
- B. FIXTURE LEASES: Fixtures on the Property are subject to one or more fixture leases (for example, solar panels, propane tanks, water softener, security system) and the Addendum Regarding Fixture Leases is attached to this contract.
- C. NATURAL RESOURCE LEASES: “Natural Resource Lease” means an existing oil and gas, mineral, water, wind, or other natural resource lease affecting the Property to which Seller is a party.
  - (1) Seller has delivered to Buyer a copy of all the Natural Resource Leases.
  - (2) Seller has not delivered to Buyer a copy of all the Natural Resource Leases. Seller shall provide to Buyer a copy of all the Natural Resource Leases within 3 days after the Effective Date. Buyer may terminate the contract within \_\_\_\_\_ days after the date the Buyer receives all the Natural Resource Leases and the earnest money shall be refunded to Buyer.

~~[LICENSE HOLDER DISCLOSURE: Texas law requires a real estate license holder who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the license holder owns more than 10%, or a trust for which the license holder acts as a trustee or of which the license holder or the license holder’s spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: \_\_\_\_\_]~~



to the buyer within 3 days after the effective date of the contract, or the buyer may terminate the contract within a period of days set in the contract. In that instance, earnest money shall be refunded to the buyer.

Paragraph 4 also prohibits, without the buyer's consent, any new leases, amendments to existing leases, or conveyance of interest in the property after the effective date of the contract. If there are no existing leases on the property, no box should be checked.

## Paragraph 5 – EARNEST MONEY AND TERMINATION OPTION

Changes to Paragraph 5 are likely the most significant for license holders, as well as title companies, in terms of daily practice.

**Delivery of Earnest Money and Option Money:** Paragraph 5 was amended to require payment of the option fee to the escrow agent separately, or combined with earnest money in a single remittance. In most cases, the option fee and earnest money must be delivered to the escrow agent within 3 days after the effective date of the contract. However, the deadline to deliver the option fee by the third day after the effective date of the contract is extended in the event the third day falls on a Saturday, Sunday, or legal holiday, similar to the existing allowance for earnest money. Revisions also clarify the application of funds first being applied to the option fee, then to the earnest money, and then to any additional earnest money. There is also language in the revised contract authorizing release and delivery of the option fee to the seller at any time, including language relieving the escrow agent from liability related to that release. Additional language states the option fee will be credited to the sales price at closing.

### 5. EARNEST MONEY AND TERMINATION OPTION:

A. DELIVERY OF EARNEST MONEY AND OPTION FEE: Within 3 days after the Effective Date, Buyer must deliver to \_\_\_\_\_, as escrow agent, at \_\_\_\_\_ (address): \$ \_\_\_\_\_ as earnest money and \$ \_\_\_\_\_ as the Option Fee. The earnest money and Option Fee shall be made payable to escrow agent and may be paid separately or combined in a single payment.

(1) Buyer shall deliver additional earnest money of \$ \_\_\_\_\_ to escrow agent within \_\_\_\_\_ days after the Effective Date of this contract.

(2) If the last day to deliver the earnest money, Option Fee, or the additional earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money, Option Fee, or the additional earnest money, as applicable, is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(3) The amount(s) escrow agent receives under this paragraph shall be applied first to the Option Fee, then to the earnest money, and then to the additional earnest money.

(4) Buyer authorizes escrow agent to release and deliver the Option Fee to Seller at any time without further notice to or consent from Buyer, and releases escrow agent from liability for delivery of the Option Fee to Seller. The Option Fee will be credited to the Sales Price at closing.

B. TERMINATION OPTION: For nominal consideration, the receipt of which Seller acknowledges, and Buyer's agreement to pay the Option Fee within the time required, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within \_\_\_\_\_ days after the Effective Date of this contract (Option Period). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If Buyer gives notice of termination within the time prescribed: (i) the Option Fee will not be refunded and escrow agent shall release any Option Fee remaining with escrow agent to Seller; and (ii) any earnest money will be refunded to Buyer.

C. FAILURE TO TIMELY DELIVER EARNEST MONEY: If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money.

D. FAILURE TO TIMELY DELIVER OPTION FEE: If no dollar amount is stated as the Option Fee or if Buyer fails to deliver the Option Fee within the time required, Buyer shall not have the unrestricted right to terminate this contract under this paragraph 5.

E. TIME: Time is of the essence for this paragraph and strict compliance with the time for performance is required.

~~[EARNEST MONEY: Within 3 days after the Effective Date, Buyer must deliver \$ \_\_\_\_\_ as earnest money to \_\_\_\_\_, as escrow agent, at \_\_\_\_\_ (address). Buyer shall deliver additional earnest money of \$ \_\_\_\_\_ to escrow agent within \_\_\_\_\_ days after the Effective Date of this contract. If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money. If the last day to deliver the earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday. **Time is of the essence for this paragraph.]**~~



**Termination Option:** Paragraph 5 incorporates language previously found in Paragraph 23 relating to the remedy for failure to timely deliver the option fee and earnest money.

**Best Practice Tips:** Understanding the changes to Paragraph 5 is crucial to protecting the buyer's termination rights. License holders should work closely with buyers to ensure the correct amount of money is delivered to the escrow agent within the required time-frames. For example, if an incorrect amount is delivered and is less than what is required, the money will first be applied to the option fee and, if sufficient, the option period can be preserved. However, if the total amount (option fee plus earnest money) is insufficient, meaning the amount received covers the option fee, but not all of the earnest money, the seller can terminate and exercise remedies under Paragraph 15.

An equally important best practice for the listing agent is to check with the title company to see exactly how much money was delivered by the buyer as soon as the 3-day period has expired. The title company is not a party to the contract and will receipt the money on the date received without consideration of the dates listed in the contract. It is crucial that the listing agent inform the seller regarding delivery, amount paid, and any possible implications that delivery might have on the seller's termination option.

**Note:** Paragraph 5.E. contains "Time is of the Essence" language and requires strict compliance related to performance under this paragraph. As a license holder, you must work with your client to ensure obligations are met and termination rights preserved.

## Paragraph 8 – BROKERS AND SALES AGENTS

Note: The LICENSE HOLDER DISCLOSURE language previously found in Paragraph 4 was moved to Paragraph 8, which is retitled **BROKERS AND SALES AGENTS**.

### Paragraph 10.B. - SMART DEVICES

Paragraph 10.B. was amended to address smart devices (Note: amended language in 10.B in the *Unimproved Property Contract* is different). New Paragraph 10.B. defines smart devices and requires the seller deliver to the buyer written information containing all access codes, usernames, passwords, and applications the buyer will need to utilize smart devices and terminate all access and connections from the seller's personal devices. Because smart devices often require a protected level of access, these changes are intended to address relevant technology requirements and ensure safe and complete transition of access rights from the seller to the buyer. In an effort to protect personal information, the seller may change existing access codes, usernames, or passwords to something generic or restore a smart device to factory settings prior to delivery to the buyer.

### Paragraph 18.A. & B. - ESCROW

Paragraph 18.A was amended to allow the escrow agent to require any disbursement made under the contract to be made in good funds. The use of the term "good funds" here is intentional because title companies must be in compliance with certain regulations required by the Texas Department of Insurance.

Paragraph 18.B was amended to further define expenses that an escrow agent may deduct.

#### **8. BROKERS AND SALES AGENTS:**

A. BROKER OR SALES AGENT DISCLOSURE: Texas law requires a real estate broker or sales agent who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the broker or sales agent owns more than 10%, or a trust for which the broker or sales agent acts as a trustee or of which the broker or sales agent or the broker or

Initialed for identification by Buyer \_\_\_\_\_ and Seller \_\_\_\_\_ TREC NO. 20-15 [~~20-14~~]

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(Address of Property)

sales agent's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable:

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

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

## 10. POSSESSION:

- A. BUYER'S POSSESSION ~~[Buyer's Possession]~~: Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted:  upon closing and funding  according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. **Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.**
- B. SMART DEVICES: "Smart Device" means a device that connects to the internet to enable remote use, monitoring, and management of: (i) the Property; (ii) items identified in any Non-Realty Items Addendum; or (iii) items in a Fixture Lease assigned to Buyer. At the time Seller delivers possession of the Property to Buyer, Seller shall:
- (1) deliver to Buyer written information containing all access codes, usernames, passwords, and applications Buyer will need to access, operate, manage, and control the Smart Devices; and
  - (2) terminate and remove all access and connections to the improvements and accessories from any of Seller's personal devices including but not limited to phones and computers.
- ~~[Leases:  
(1) After the Effective Date, Seller may not execute any lease (including but not limited to mineral leases) or convey any interest in the Property without Buyer's written consent.  
(2) If the Property is subject to any lease to which Seller is a party, Seller shall deliver to Buyer copies of the lease(s) and any move-in condition form signed by the tenant within 7 days after the Effective Date of the contract.]~~

## 18. ESCROW:

- A. ESCROW: The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent. Escrow agent may require any disbursement made in connection with this contract to be conditioned on escrow agent's collection of good funds acceptable to escrow agent.
- B. EXPENSES: At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties; ~~[7]~~ and (ii) require payment of unpaid expenses incurred on behalf of a party. ~~[, and (iii) only]~~ Escrow agent may deduct authorized expenses from the earnest money payable to a party. "Authorized expenses" means [the amount of unpaid] expenses incurred by escrow agent on behalf of the party entitled [receiving] to the earnest money that were authorized by this

Initialed for identification by Buyer \_\_\_\_\_ and Seller \_\_\_\_\_ TREC NO. 20-15 ~~[20-14]~~

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(Address of Property)

contract or that party.

## Paragraph 23 to End of Contract

Paragraph 23 was merged into the new Paragraph 5. Accordingly, Paragraph 24 was renumbered and is the new Paragraph 23. Additional changes to the new Paragraph 23 were also made. Lines for "Team Name" were added. Additional language was included to disclose any separate commission agreement between the listing broker and other broker. However, the additional language is only a disclosure and not the actual agreement. Language regarding the payment agreement

between the listing broker and other broker, as well as the escrow agent's authorization to pay, were deleted from the Broker Information page of all forms except the Farm and Ranch Contract form. The Option Fee Receipt was amended to strike reference to the seller/broker and replace with escrow agent to account for the changes in Paragraph 5.

**BROKER INFORMATION**  
(Print name(s) only. Do not sign)

Other Broker Firm \_\_\_\_\_ License No. \_\_\_\_\_

represents  Buyer only as Buyer's agent  
 Seller as Listing Broker's subagent

Listing Broker Firm \_\_\_\_\_ License No. \_\_\_\_\_

represents  Seller and Buyer as an intermediary  
 Seller only as Seller's agent

Associate's Name \_\_\_\_\_ License No. \_\_\_\_\_

Listing Associate's Name \_\_\_\_\_ License No. \_\_\_\_\_

Team Name \_\_\_\_\_

Team Name \_\_\_\_\_

Disclosure: Pursuant to a previous, separate agreement (such as a MLS offer of compensation or other agreement between brokers) Listing Broker has agreed to pay Other Broker a fee (\_\_\_\_\_). This disclosure is for informational purposes and does not change the previous agreement between brokers to pay or share a commission. [~~Listing Broker has agreed to pay Other Broker \_\_\_\_\_ of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay Other Broker from Listing Broker's fee at closing.~~]

## Additional Changes to Other Promulgated Forms (also effective April 1, 2021):

These forms may be found at [www.trec.texas.gov](http://www.trec.texas.gov).

New Home Contract (Incomplete Construction) (Form #23-16)

Language was added in Paragraph 7.J. of the Incomplete Construction Contract to mirror the language in the *Complete Construction Contract Paragraph 7.I.* regarding residential service contracts.

Residential Condominium Contract (Resale) (Form #30-14)

All references to a survey in Paragraph 6 of the Residential Condominium Contract were removed.

Notice of Buyer's Termination of Contract (Form No. 38-7)

Item #1 on the form was updated to reference Paragraph 5 instead of the previously referenced Paragraph 23.

## Addendum Changes (effective April 1, 2021)

These forms may be found at [www.trec.texas.gov](http://www.trec.texas.gov)

Short Sale Addendum (Form #45-2)

Item F on the form was updated to reference Paragraph 5 instead of the previously referenced Paragraph 23.

The Addendum for Property Subject to Mandatory

Membership in a Property Owners Association (Form #36-9)

Item C was amended to add deposits and reserves to the list of payments the buyer will make in association with the transfer of the property.

## Two New Promulgated Addenda Forms Created

The Addendum Regarding Residential Leases (Form #51-0)

The Addendum Regarding Residential Leases is a new form that must be attached if the seller has a residential lease on the property. The form requires the parties to select whether the lease will be (A) terminated by closing and possession of the property, or (B) assigned by the seller and assumed by the buyer. If the lease will be assigned and assumed, the seller has several new obligations under the contract, including making specific representations about the status of the lease. This addendum includes what can occur if any of the representations become untrue after the contract is executed. Please review the entire form in Appendix A.

The Addendum Regarding Fixture Leases (Form #52-0)

The Addendum Regarding Fixture Leases is a new form that protects the parties regarding leased fixtures on the property. Examples of leased fixtures include

**C. FEES AND DEPOSITS FOR RESERVES:** Except as provided by Paragraphs A[7] and D[-and-E], Buyer shall pay any and all Association fees, deposits, reserves, and [or] other charges associated with the transfer of the Property not to exceed \$\_\_\_\_\_ and Seller shall pay any excess.

~~[D-DEPOSITS FOR RESERVES: Buyer shall pay any deposits for reserves required at closing by the Association.]~~

solar panels, propane tanks, water softeners and security systems. This form allows the parties to negotiate which leased fixtures will be assumed by the buyer. Understanding and using this form when appropriate will ensure both buyer and seller are properly notified regarding any leased fixtures on the property. The notice toward the bottom of the addendum advises the buyer and seller to consult with the lessor and their attorneys regarding assignment, assumption, or termination of any fixture leases associated with the property. Please review the entire form in Appendix A.

**One New Promulgated Addendum Available for Use Effective 09/01/2021**

The Addendum Containing Notice of Obligation to Pay Improvement District Assessment is a newly created addendum arising from HB 1543 out of the 87th Legislative Session. This addendum contains required notice language related to properties located in public improvement districts. This addendum is available for use on 9/1/2021 based on an emergency rulemaking. The final version of this addendum will likely be available in early December 2021.

**Let’s Get Real...Best Practice Tips**

**Proper Use of Paragraph 21 of the One to Four Family Residential Contract (Resale)**

The information in this paragraph, which is generally added by the license holder(s) representing each party, is intended to be the contact information of the buyer and/or the seller. License holders should be aware of the risks involved if paragraph 21 is left blank or if contact information for the license holder, rather than a party, is inserted. Having a license holder’s contact information in paragraph 21, for instance, could create delays that might impact a party’s options.

Real world examples are sometimes easier to understand. A buyer and seller enter into a contract where the buyer is trying to sell their own home. The contract includes the Addendum for Sale Of Other Property by Buyer. Paragraph B of the addendum says that if the seller accepts a written offer to sell the property, the seller must notify the buyer. The buyer, in turn,

must then waive the contingency on or before the third day after receiving notice or the contract will terminate. The seller accepted a written offer on May 1 and sends notice to the email address of the buyer’s agent that same day because the agent’s contact information was listed in paragraph 21. The buyer’s agent accidentally misplaces the email and does not find and forward the email to the seller until May 5. The buyer wants to waive the contingency, but because the buyer did not receive the seller’s notice until after the time to waive had expired, the seller now says their contract is terminated. The buyer is upset with their agent and is threatening to sue.

In another scenario, a buyer represented by broker Johan, purchases an option to terminate in paragraph 5 of the contract by timely paying the correct option fee in good funds to the title company. The buyer subsequently chooses to terminate under the provision and instructs Johan to give notice of termination to the seller’s agent. Johan prepares TREC form 38-7, Notice of Buyer’s Termination of Contract, and checks box 1 for the unrestricted right to terminate the contract under paragraph 5 of the contract. The buyer digitally signs this form at 3 pm on the last day of the option period. Johan then sends the signed form to the Seller’s agent because the Seller’s contact information in paragraph 21 of the contract was left blank, and Johan has not been able to obtain the contact information from the seller’s agent. The form is sent at 3:15 pm to the seller’s agent by email. The seller’s agent is taking the afternoon off and does not open the email until the next morning. She sends the notice to the seller. Upon receipt of the notice, the seller responds to their agent insisting that the buyer cannot terminate because they didn’t receive the notice until after the 5pm deadline the previous day. Now the parties are fighting.

Not including client contact information on the contract form may put you and your client at risk.

Make it a habit to send all notices to the other agent AND their clients at the same time and use as many forms of contact as are available (written, email, text, message in a bottle...).

<b>21. NOTICES:</b> All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by fax or electronic transmission as follows:	
<b>To Buyer at:</b> _____	<b>To Seller at:</b> _____
Phone: ( ) _____	Phone: ( ) _____
E-mail/Fax: [←→] _____	E-mail/Fax: [←→] _____
E-mail/Fax: _____	E-mail/Fax: _____



## Back-Up Offers

Way back when, a license holder could write a back-up offer on behalf of a buyer and deliver it to the seller's agent. The seller's agent would just hold the back-up offer in a manila folder until the first contract terminated or closed. If the original contract was terminated, the seller's agent would call the buyer's agent and ask if they were still interested in purchasing the property. If they said "yes", the seller's agent would present the offer to the seller. Those who have been in the business a long time will remember the contract was much shorter and everything was handwritten or typed.

Today, the process is more formal and the Addendum for "Back-Up" Contract form is required. If a buyer

wants to submit an offer on a property currently under contract, the buyer and the buyer's agent must prepare the contract as one would if there was not another contract already in place. The Addendum for "Back-Up" Contract must be submitted along with a contract, like the One to Four Family Residential Contract (Resale.)

A buyer may not understand the potential benefit of making an offer on a property already under contract. In competitive markets where emotions are high, buyers have been known to make offers, go under contract and then get "cold feet", at which time they exercise their termination option or find some other way out of the contract. Being a back-up buyer in these situations, may be a great place to be.



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

12-05-11



### **ADDENDUM FOR "BACK-UP" CONTRACT**

#### **TO CONTRACT CONCERNING THE PROPERTY AT**

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(Address of Property)

- A. The contract to which this Addendum is attached (the Back-Up Contract) is binding upon execution by the parties, and the earnest money and any Option Fee must be paid as provided in the Back-Up Contract. The Back-Up Contract is contingent upon the termination of a previous contract (the First Contract) dated \_\_\_\_\_, 20\_\_\_\_\_, for the sale of Property. Except as provided by this Addendum, neither party is required to perform under the Back-Up Contract while it is contingent upon the termination of the First Contract.
- B. If the First Contract does not terminate on or before \_\_\_\_\_, 20\_\_\_\_\_, the Back-Up Contract terminates and the earnest money will be refunded to Buyer. Seller must notify Buyer immediately of the termination of the First Contract. For purposes of performance, the effective date of the Back-Up Contract changes to the date Buyer receives notice of termination of the First Contract (Amended Effective Date).
- C. An amendment or modification of the First Contract will not terminate the First Contract.
- D. If Buyer has the unrestricted right to terminate the Back-Up Contract, the time for giving notice of termination begins on the effective date of the Back-Up Contract, continues after the Amended Effective Date and ends upon the expiration of Buyer's unrestricted right to terminate the Back-Up Contract.
- E. For purposes of this Addendum, time is of the essence. Strict compliance with the times for performance stated herein is required.

Here are some FAQs on the Back-Up Addendum.

**Q: I have a listing under contract and another agent has a buyer who wishes to make an offer, can this be done?**

A: Yes, the promulgated TREC contract expressly permits the seller to negotiate and accept back-up offers under paragraph 19. In addition to the One to Four Residential Family Contract, the Addendum for “Back-Up” Contract is required. A contract between the seller and a back-up buyer must be fully negotiated, signed, and earnest money and option money (if applicable) must be remitted in accordance with the contract terms.

**Q: When writing a back-up offer on a property, how do I determine the dates for paragraphs A and B in the Addendum for “Back-Up” Contract?**

A: Paragraph A is the effective date of the first contract. The date you put in Paragraph B is dictated by the back-up buyer’s wishes. You and the buyer will discuss the pros and cons of how long the buyer wishes to stay in a back-up position. Some common choices for the date in Paragraph B are one day after the option period ends on the first contract or one day after the financing contingency ends in the first contract. This information can be obtained from the seller’s agent or broker.

**Q: Why must earnest money and option fee be paid with a back-up contract?**

A: The contract is a binding agreement between the parties to the transaction. All terms of the parties’ agreement for the transaction should be reflected in the contract or addenda and the parties must comply with the terms of the contract and addenda. This applies to a “back-up” contract as well. While the addendum suspends the performance of the parties’ obligations under the contract, it specifically requires that the earnest money be remitted within the time required by the “back-up” contract (3 days after the Effective Date) and, if an option period is part of the contract, option money must also be remitted within that timeframe.

**Q: When can a buyer under a back-up contract get earnest money returned?**

A: If the first contract does not terminate on or before the date specified in paragraph B of the Addendum for “Back-Up” Contract, the earnest money will be returned to the back-up buyer. Additionally, if the back-up buyer purchased an option period and exercises a right to terminate prior to the end of the option period, the earnest money will be returned to the back-up buyer.

**Q: Can the buyer get the option fee refunded if the first contract closes?**

A: No. According to Texas case law, consideration must be paid to create a valid option period. Option money, therefore, is not refundable, regardless of whether the option to terminate is exercised.

**Q: If a buyer is in a back-up position and purchased an option period for the contract, can the buyer exercise the right to back out before they go into first place?**

A: Yes, if the buyer used the Addendum for “Back-Up” Contract form AND purchased an option period AND timely tendered the option money, then paragraph D of the addendum gives them the right to terminate the entire time they are in a back-up position. The option period does not begin until the day the buyer is given notice that they are in first position. If the contract is terminated during the option period, the earnest money will be returned to the “back-up” buyer. The option money is kept by the seller.

**Q: If the back-up contract goes into first position, what is the effective date of the new contract for purposes of counting days for performance?**

A: The addendum states the effective date of the back-up contract is changed to the date buyer receives notice of the termination of the first contract and is defined as the Amended Effective Date.

**Q: Does an amendment or any modification of the first contract terminate the first contract and put the back-up contract in first position?**

A: No, paragraph C of the addendum specifically states this would not terminate the first contract.

**Q: Can the back-up addendum be used for a second, third, or fourth contract?**

A: No. The addendum is designed for the first back-up position only. If a back-up contract has already been executed by the Seller, altering the addendum to fit a second-place back-up contract is considered the unauthorized practice of law. If a second-place back-up contract is desired by the client, the client must retain an attorney to prepare an addendum or prepare it themselves.

## Best Practices with Back-Up Contracts

Contact the seller’s agent to get the dates needed to properly fill out the Addendum for “Back-Up” Contract. Remember back-up offers should be fully negotiated, signed, and earnest money and option money remitted. Read and make sure you understand the provisions in the Addendum for “Back-Up” Contract. If you have little or no experience with back-up offers, consult your broker and/or take a class to learn strategies. Competency is key.

Keep in mind, even though the buyer has no obligation to perform while in a back-up position, it is a best practice for the buyer to work toward obtaining financing while in the back-up position. Not only will this expedite the process if the buyer moves to the first position, it also gives the buyer better flexibility and a better chance of obtaining a contract on another property if one becomes available while the buyer is in the back-up position.

## Appraisal Addendum Issues

It is no secret that property values have skyrocketed in Texas and buyers are regularly offering amounts well over list prices. Agents, buyers and sellers are all challenged with understanding the guidelines and procedures for securing the best offer. As a result, many sellers are receiving high priced cash offers, forfeiting appraisals.

The Addendum Concerning Right to Terminate Due to Lender's Appraisal form was created to meet an industry request. It is a tool that can be used when a buyer and seller agree to move forward with a transaction even if the appraisal for a conventional loan is lower than the sales price agreed to in the contract. Prior to the creation of this form, some license holders were performing the unauthorized practice of law by inserting language in paragraph 11 of the One to Four Family Residential Contract form, which prompted complaints filed with TREC. The Broker Lawyer Committee proposed this form and the Commission adopted it in November of 2019.

## Back Up Scenario – “I’ve Got Your Back”

Armando and Juliette work for the same brokerage, they are not close friends. Juliette represents the seller and Armando represents the buyer. The property is under contract. Armando and Juliette properly prepared all documents and received informed consent from the buyer and seller and their broker to act as appointed agents in an intermediary situation. (There is a listing agreement authorizing intermediary, a buyer representation agreement authorizing intermediary and a notice of intermediary relationships from a trade association; all signed by the respective parties.)

Juliette and the seller have received a backup offer from Violet, an agent with another brokerage. The back-up contract is executed and both option and earnest money have been remitted appropriately. The sales price in Armando's contract is higher than the back-up offer.

At 4:55 pm on Friday, the last day of the option period for Armando's buyer, the buyer calls Armando and says “I want out of this contract.” Armando quickly texts Juliette, “The buyer wants out of this deal.” This is the only “deal” Armando and Juliette have ongoing. Juliette receives this text at 4:57 pm and does not know what to do with it. Someone in her office says “That doesn't count, it is not on the correct form.”

Juliette texts the agent who presented the backup offer, “You may be in first place, I am not sure.” Violet responds, “What does this mean?” The weekend passes with no further communication from Juliette. Violet attempts to contact Juliette several times. Juliette finally responds, asking if Violet's buyer is willing to match the higher sales price in the first contract. Violet's broker calls Juliette's broker, but no calls are returned.

### DISCUSSION

1. Is the text from Armando to Juliette enough to constitute notice?
2. Is the back-up contract now in first place, since Juliette texted Violet saying that she may be in first place?
3. What is the Amended Effective Date of the back-up contract?
4. Can Juliette renegotiate the sales price of the back-up contract for the seller before agreeing that the back-up contract is in first place?



**ADDENDUM CONCERNING RIGHT TO TERMINATE  
DUE TO LENDER'S APPRAISAL**

*Use only if the Third Party Financing Addendum is attached to the contract and  
the transaction does not involve FHA insured or VA guaranteed financing*



**CONCERNING THE PROPERTY AT:** \_\_\_\_\_  
(Street Address and City)

The financing described in the Third Party Financing Addendum attached to the contract for the sale of the above-referenced Property does not involve FHA or VA financing. *(Check one box only)*

- (1) **WAIVER.** Buyer waives Buyer's right to terminate the contract under Paragraph 2B of the Third Party Financing Addendum if Property Approval is not obtained because the opinion of value in the appraisal does not satisfy lender's underwriting requirements.

If the lender reduces the amount of the loan due to the opinion of value, the cash portion of Sales Price is increased by the amount the loan is reduced due to the appraisal.

- (2) **PARTIAL WAIVER.** Buyer waives Buyer's right to terminate the contract under Paragraph 2B of the Third Party Financing Addendum if:
  - (i) Property Approval is not obtained because the opinion of value in the appraisal does not satisfy lender's underwriting requirements; and
  - (ii) the opinion of value is \$ \_\_\_\_\_ or more.

If the lender reduces the amount of the loan due to the opinion of value, the cash portion of Sales Price is increased by the amount the loan is reduced due to the appraisal.

- (3) **ADDITIONAL RIGHT TO TERMINATE.** In addition to Buyer's right to terminate under Paragraph 2B of the Third Party Financing Addendum, Buyer may terminate the contract within \_\_\_\_\_ days after the Effective Date if:
  - (i) the appraised value, according to the appraisal obtained by Buyer's lender, is less than \$ \_\_\_\_\_; and
  - (ii) Buyer delivers a copy of the appraisal to the Seller.

If Buyer terminates under this paragraph, the earnest money will be refunded to Buyer.

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Seller



The form of this addendum has been approved by the Texas Real Estate Commission for use only with similarly approved or promulgated forms of contracts. Such approval relates to this contract form only. TREC forms are intended for use only by trained real estate license holders. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 936-3000 (www.trec.texas.gov) TREC No. 49-1.



## Why would a buyer want to select option 1 on form 49-1?

In a seller's market, the buyer who has the ability to pay more than list price, regardless of the appraised value, has a significant advantage over other potential buyers. Buyers in this position must fully understand their financial obligations within the terms of the contract and ensure they have adequate funds available to fulfill their obligations, or the ability to qualify for a higher loan amount. This might seem like an obvious statement, but please note that option 1 is a FULL Waiver of the Buyer's right to terminate under Paragraph 2B.

## Why would a buyer want to select option 2 on form 49-1?

Box 2 is similar to box 1 but the buyer wants to have control over the amount they will pay over the appraised value. This option allows the buyer to set a limit on how much they would be willing to bring to closing above the appraised value. For instance, the property is listed at \$325,000 and the buyer enters into a contract for the property at \$325,000, with a down payment of \$65,000. The buyer is willing and able to pay an additional \$10,000 if the property appraises below \$325,000. The buyer would instruct the agent to insert \$315,000 into the blank in box 2. If the property

appraises for \$315,000 or more, the buyer is obligated to consummate the sale. If the appraisal comes in below \$315,000, the buyer has not waived the buyer's right to terminate under the Third Party Financing Addendum.

Another situation might occur in a hot market where there are likely to be multiple offers. The property is listed at \$310,000 and the buyer is willing to put in an offer of \$325,000, knowing the property will likely not appraise for that much. The buyer could use box 2 to limit the extra amount they have to bring to closing to the listing price, since that was what the seller thought the property was worth. In that case, the buyer would instruct the agent to put \$310,000 in the blank. If the property appraises for \$310,000 or more, the buyer is obligated to follow through with the sale. If the appraisal comes in below \$310,000, the buyer has not waived the buyer's right to terminate under the Third Party Financing Addendum.

## Why would a buyer want to select option 3 on form 49-1?

The Buyer does not waive Buyer's right to terminate under the Third Party Financing Addendum and has an additional right to terminate should the appraisal come in below the stated value. The Buyer must deliver a copy of the appraisal to the seller along with the notice to terminate.

- (1) **WAIVER.** Buyer waives Buyer's right to terminate the contract under Paragraph 2B of the Third Party Financing Addendum if Property Approval is not obtained because the opinion of value in the appraisal does not satisfy lender's underwriting requirements.

If the lender reduces the amount of the loan due to the opinion of value, the cash portion of Sales Price is increased by the amount the loan is reduced due to the appraisal.

- (2) **PARTIAL WAIVER.** Buyer waives Buyer's right to terminate the contract under Paragraph 2B of the Third Party Financing Addendum if:

- (i) Property Approval is not obtained because the opinion of value in the appraisal does not satisfy lender's underwriting requirements; and
- (ii) the opinion of value is \$ 315,000.00 or more.

If the lender reduces the amount of the loan due to the opinion of value, the cash portion of Sales Price is increased by the amount the loan is reduced due to the appraisal.

- (3) **ADDITIONAL RIGHT TO TERMINATE.** In addition to Buyer's right to terminate under Paragraph 2B of the Third Party Financing Addendum, Buyer may terminate the contract within 25 days after the Effective Date if:

- (i) the appraised value, according to the appraisal obtained by Buyer's lender, is less than \$ 310,000.00; and
- (ii) Buyer delivers a copy of the appraisal to the Seller.

If Buyer terminates under this paragraph, the earnest money will be refunded to Buyer.

Note: The number of days inserted in the first blank is the number of days estimated to receive an appraisal report, which may vary depending on market conditions.

### Why can't license holders use TREC Form 49-1 Addendum Concerning Right to Terminate Due to Lender's Appraisal for an FHA or VA loan buyer?

TREC Form 49-1 specifically notes right under the title that it cannot be used for "FHA insured or VA guaranteed financing" because federal law dictates how and when an FHA or VA buyer can terminate due to a low appraisal. This is true whether the form is prepared by a license holder or a party to the contract.

Pursuant to federal regulations and underwriting guidelines put in place for FHA and VA loans in 1978, a form containing a prescribed clause (known as the Amendatory Clause) must be given to an FHA or VA purchaser or included in the sales contract when the purchaser has not been informed of the appraised value before signing the sales contract. In Texas, the Amendatory Clause language is contained in the body of Paragraph 4 of the Third Party Financing Addendum:

A license holder should NEVER use the Appraisal Addendum with VA or FHA OR, for any reason, write an appraisal contingency into Paragraph 11 of the contract. This is considered the unauthorized practice of law. Any attempt to waive an appraisal contingency for VA or FHA will not be effective since the Amendatory Clause (as reflected in Paragraph 4 of the Third Party Financing Addendum) provides, **"It is expressly agreed that, notwithstanding any other provision of this contract, the purchaser (Buyer) shall not be obligated..."** This required language makes clear that the purchaser shall not be obligated to complete the purchase or lose earnest money in the event of a low appraisal, even if other provisions of the contract attempt to waive the appraisal contingency.

However, an FHA or VA buyer can elect to pay more than the appraised value **AFTER the appraised value is known** in accordance with federal guidelines as set out in subsections A-C of Paragraph 4.

### An Important Note on Escalation Clauses

There may be instances where a client wants to add language to a real estate contract. In a "hot market," it is not uncommon for a buyer to want an escalation clause added to the contract (for example, language stating the buyer will pay "X" amount more than the highest offer if other offers are present"). Often times, an escalation clause will be added to "Paragraph 11, Special Provisions" (which is reserved for factual statements and business details) of the One to Four Family Residential Contract, but it might also be drafted as an addendum to the contract. **WRONG!**

It is important to remember that a real estate contract is a legal document and any changes to the contract can impact the rights of the parties to the contract (the buyer and the seller). A license holder cannot draft an addendum or add language to the contract that defines or affects the rights, obligations, or remedies of the parties. and the Real Estate License Act and TREC Rules—specifically TREC Rule 537.11(b)(5) -- prohibit this. A license holder who adds these terms to the contract in any manner, including drafting an escalation clause, is engaged in the unauthorized practice of law.

To avoid violating the law, a license holder whose client wants this type of language added to the contract, or has questions regarding the impact of specific language (such as an escalation clause) should always recommend the client consult with their attorney. Remember, a license holder who violates this may be subject to disciplinary action, which could include an administrative penalty between \$500 - \$3,000 per violation per day and/or possible license suspension or revocation.

- 4. FHA/VA REQUIRED PROVISION:** If the financing described above involves FHA insured or VA financing, it is expressly agreed that, notwithstanding any other provision of this contract, the purchaser (Buyer) shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise: (i) unless the Buyer has been given in accordance with HUD/FHA or VA requirements a written statement issued by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement Lender setting forth the appraised value of the Property of not less than \$ \_\_\_\_\_ or (ii) if the contract purchase price or cost exceeds the reasonable value of the Property established by the Department of Veterans Affairs. The 3-day notice of termination requirements in 2.B. does not apply to this Paragraph 4.
- A. The Buyer shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation or the reasonable value established by the Department of Veterans Affairs.
  - B. If FHA financing is involved, the appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or the condition of the Property. The Buyer should satisfy himself/herself that the price and the condition of the Property are acceptable.
  - C. If VA financing is involved and if Buyer elects to complete the purchase at an amount in excess of the reasonable value established by the VA, Buyer shall pay such excess amount in cash from a source which Buyer agrees to disclose to the VA and which Buyer represents will not be from borrowed funds except as approved by VA. If VA reasonable value of the Property is less than the Sales Prices, Seller may reduce the Sales Price to an amount equal to the VA reasonable value and the sale will be closed at the lower Sales Price with proportionate adjustments to the down payment and the loan amount.





# CHAPTER 03

## FAIR HOUSING – DIVERSITY AND INCLUSION IN REAL ESTATE

### Learning Objectives

After this chapter, you will be able to

- Understand the impact of discrimination on fair housing in real estate and give one example of current fair housing violations.
- Recognize practices real estate license holders engage in that may be considered discriminatory.
- Understand recent trends in fair housing discrimination complaints and the classes affected.
- Identify diversity & inclusion initiatives, terms and conditions.
- List the protected classes of people found in TREC's Canons of Professional Ethics and Conduct, TREC rule §531.19



### History of Civil Rights Laws Impacting Real Estate

The first fair housing law in the United States was The Civil Rights Act of 1866 which essentially prohibits discrimination in the sale or lease of housing based on race and color. In 1968, *Jones v. Alfred H. Mayer Co.*, the Supreme Court confirmed the government could regulate the sale of public and private property, making racial discrimination illegal. The Civil Rights Act of 1866 is still enforced today with no exceptions.

The Civil Rights Act of 1968, which is commonly called the Fair Housing Act, prohibits discrimination concerning the sale, lease, or financing of housing based on race, color, religion, and national origin

initially, with amendments in 1974 to include sex as a protected class and again in 1988 to include families with children and people with disabilities.

There are exceptions to the Civil Rights Act of 1968 but real estate license holders are never exempt under the law. Exceptions include:

- \* A person who owns no more than three houses, selling their own property, who does not discriminate in advertising.
- \* A religious organization that limits occupancy in housing it owns as long as membership in its congregation is open to all.
- \* A private club that limits occupancy to lodges it owns as long as the lodgings are not operated commercially.

## Disparate Impact

A 2015 US Supreme Court case, *Texas Department of Housing and Community Affairs v Inclusive Communities Project, Inc.* focused on the concept of disparate impact. Though not written into the Fair Housing Act, the Supreme Court concluded that even an unintentional difference in treatment of one person from another is considered discrimination.

## Fair Housing Investigations

### News Day

Recently, a news group called News Day launched an undercover investigation in Long Island regarding fair treatment of people of color in both the purchase and lease of residential real estate. The investigation sent 25 people undercover with hidden cameras for months of paired testing. In all, 86 paired tests were conducted.

In a paired test, there are two different testers, with each of the two testers typically the same sex and in the same age bracket, but different race or ethnicity. Both testers have the same family status, education level, job type, level of income and credit. They look for similar housing with similar qualities, location, and price. Basically, both testers are given exactly the same story or identity.

The US Department of Housing and Urban Development and the US Department of Justice also use paired testing to examine discriminatory practices based on race or ethnicity. Typically, paired testing discrimination investigations will test subjects multiple times to determine if there is a pattern of discrimination.

In News Day's investigation, the real estate agents investigated were tested only once. The paired testers visited the real estate agents one month apart. In all, the testers logged 240 hours of video in 86 paired tests over a 16 month period.

In 56 of the 86 paired test cases, potential buyers were presented with completely different properties in different locations, despite their similar backgrounds and qualifications. This, along with evidence in the video, suggests discrimination on the part of the real estate agents.

Whether intentional or not, the non-white testers were not shown the same properties shown to their white testing partners. The News Day study tested 12 Long Island real estate brokerages, at least three times each. Of the 12 real estate brokerages tested, only two resulted in no evidence of disparate treatment.

In November of 2019, News Day released its findings in a video report. The video, titled "Long Island Divided," is available at <https://projects.newsday.com/long-island/real-estate-agents-investigation/>

In response to the investigation, the New York State Senate created a committee to investigate News Day's findings. Most of the real estate agents and companies that were invited to meet with the panel chose not to attend the committee investigation. The senate committee subpoenaed the agents and brokers of the companies as part of their investigation.

The New York Senate committee's investigation resulted in the following recommendations:

- \* Development of a state-wide fair housing strategy;
- \* Proactive enforcement of Fair Housing laws;
- \* Increased licensing and renewal education in Fair Housing laws;
- \* Increased penalties and broader accountability;
- \* Greater government involvement to further Fair Housing laws; and
- \* Broker Industry reforms.

A copy of the New York State Senate's Committee report is available at:

<https://www.nysenate.gov/newsroom/press-releases/brian-kavanagh/senate-committees-release-investigative-report-housing>

### Redfin

In October of 2020, the National Fair Housing Alliance (NFHA), along with other groups around the country, filed a complaint in the United States District Court (Western District of Washington) against the Redfin Corporation, alleging that Redfin violated the Fair Housing Act by redlining.

According to the complaint, the NFHA alleged that Redfin, while setting minimum home listing prices in each housing market, purposefully excluded non-white people from the services that Redfin provides to buyers and sellers. The complaint states that Redfin's policies operate as a discriminatory limit on communities of color by disproportionately withholding its services to buyers and sellers in certain communities, causing a reduction of demand and value while perpetuating residential segregation.

The complaint includes statistics from several major US cities reflecting minimum price limits that fluctuate in predominately white communities versus predominately non-white communities. The complaint alleges minimum price limits reduced the opportunities of sellers and buyers in non-white areas from benefiting in Redfin's "Best Available Service." It was noted that in some areas, Redfin offered "No Service."

Though this case has not been tried or settled, it brings to light some unsettling statistics that may be indicators of redlining. If you are interested in learning more, you can follow the link to the full complaint provided below.



<https://nationalfairhousing.org/wp-content/uploads/2020/10/Redfin-Filed-Complaint.pdf>

## Fairhaven: A Fair Housing Simulation

After reviewing the results of the News Day investigation, the National Association of Realtors® created a program called Fairhaven: A Fair Housing Simulation. Members engage in four interactive computer-simulated real estate transactions. The exercise is designed to help identify and avoid acts of discrimination. The simulation provides feedback to the agent as the agent works through each scenario.

Ernst & Young Learning Labs, which developed NAR's Commitment to Excellence (C2EX) training platform, created the Fairhaven program for NAR and its members. The website is part of NAR's ACT! Initiative, a fair housing action plan that emphasizes accountability, culture change, and training to promote equal housing opportunity within the industry.

To learn more, visit <https://fairhaven.realtor/>



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## DISCUSSION

1. A real estate agent is hosting an open house today. What services might the agent offer to buyers who attend the open house? How can the agent ensure they are offering the same services equally?
2. A real estate company offers to list properties for sale throughout a particular metropolitan area. The company has several different listing services options for sellers to choose from. How can the broker and the agents ensure that the services are offered to all potential sellers equally?

## Fair Housing Complaint Trends

The National Fair Housing Alliance 2020 Fair-Housing Trends Report collects data regarding Fair Housing complaints.

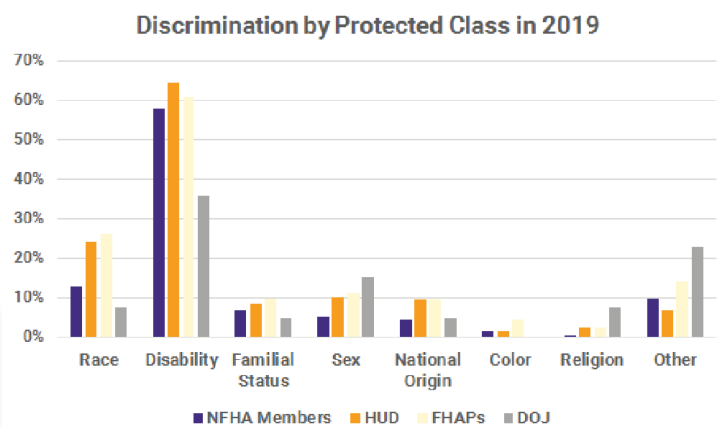
Complaints are compiled from the organizations listed below:

- \* Fair Housing Assistance Program (FHAP) – HUD;
- \* National Fair Housing Alliance (NFHA);
- \* The U.S. Department of Housing and Urban Development (HUD); and
- \* Department of Justice (DOJ).

## Fair Housing Complaint Data by Basis and Agency in 2019

Basis	NFHA Members	HUD	FHAPs	DOJ
Race	13.0%	24.3%	26.4%	7.7%
Disability	57.9%	64.5%	60.9%	35.9%
Familial Status	7.0%	8.8%	10.1%	5.1%
Sex	5.2%	10.4%	11.2%	15.4%
National Origin	4.7%	9.8%	9.6%	5.1%
Color	1.6%	1.6%	4.8%	0.0%
Religion	0.6%	2.7%	2.6%	7.7%
Other	10.1%	7.1%	14.3%	23.1%

Note: Some reported complaints included more than one basis of discrimination.  
(reprinted with permission from the National Fair Housing Alliance, 2020 Fair-Housing Trends Report)



(reprinted with permission from the National Fair Housing Alliance, 2020 Fair-Housing Trends Report)

## TREC Rules and NAR's Code of Ethics

Both the Texas Real Estate Commission and the National Association of REALTORS® have rules and policies prohibiting discriminatory practices in the real estate industry. It is important that license holders understand and adhere to them.

### TREC Rule §531.19 - Discriminatory Practices

TREC rule §531.19, Canons of Professional Ethics and Conduct, states:

- (a) No real estate license holder shall inquire about, respond to or facilitate inquiries about, or make a disclosure of an 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.
- (b) For the purpose of this section, disability includes AIDS, HIV-related illnesses, or HIV infection as defined by the Centers for Disease Control of the United States Public Health Service.

## Enforcement Spotlight – Discriminatory Practices

**Facts** - Listing agent, Sarah, lives in the same neighborhood as the listed property. Excited about the possibility of neighbors with things in common, she asked the buyer's agent the prospective buyers' race and, "Where do they go to church?"

**Result** – Sarah was found to be in violation of TREC Rule §531.19, Canons of Professional Ethics and Conduct due to her inquiry about the prospective buyer's race and religion. (Advisory Letter)

### Consider this...

*Sarah's questions about race and religion may have seemed above suspicion. Can a license holder ask these questions if they want to know the answer for themselves and do not plan on disclosing the information to their client?*

### Answer:

No, a prudent license holder would not act in a manner that can be interpreted to indicate a preference based on race or religion. When a license holder inquires about a party's race or religion, especially when asked prior to the contract being executed, it may be reasonable to believe the inquiry is related to a preference that may affect the transaction.

## National Association of REALTORS® (NAR) Code Of Ethics

On November 13, 2020, NAR's Board of Directors strengthened REALTORS® commitment to upholding fair housing ideals by approving a series of recommendations from NAR's Professional Standards Committee that extend the application of Article 10 of the Code of Ethics to discriminatory speech and conduct outside of

members' real estate practices. An additional Standard of Practice was added.

## Standard of Practice 10-5

REALTORS® must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (*Adopted and Effective 11/2020*)

Definitions:

- \* **Harassing Speech:** Speech that is intended to threaten, intimidate, denigrate or otherwise harass a person or group of people
- \* **Hate Speech:** Speech that is intended to insult, offend, or intimidate a person because of some trait (such as race, religion, sexual orientation, national origin, or disability)
- \* **Epithets:**
  - a) a characterizing word or phrase accompanying or occurring in place of the name of a person or thing;
  - b) a disparaging or abusive word or phrase
- \* **Slurs:**
  - a) insulting or disparaging remark or innuendo; *aspersion*;
  - b) a shaming or degrading effect; *stain or stigma*

## Professional Standards #29

Professional Standard #29 states that "A REALTOR® shall be subject to disciplinary action under the Code of Ethics with respect to all of their activities."

## Love Letters with Multiple Offers and Fair Housing

The decision to write or receive a buyer offer letter is solely up to the client. It is up to the license holder to ensure everyone understands the risk of potential fair housing violations.

Buyer offer letters, also known as "love letters" in real estate, have long been a practice in gaining an edge during a multiple offer situation. The controversy over what is included in the letter is still a major industry concern. By submitting a love letter with an offer, the buyer is attempting to touch the heart of the seller and persuade the seller to select their offer over other offers.

Decisions might unknowingly (or knowingly) be made with bias, putting a seller at risk of discriminating. For example, a minority, single mother shares photos, a cute short video and her struggles of raising four children alone. She expresses her excitement to raise her children in a diverse community. This information could impact the seller's decision to favor or not favor the offer.



If the seller rejects the offer, the buyer could potentially file a fair housing complaint based on race, sex, and/or familial status. If the seller did not accept love letters from any of the potential buyers, they would have avoided this issue all together.

More information is available at <https://www.nar.realtor/videos/window-to-the-law/how-to-handle-multiple-offers> and was reproduced with permission from the National Association of REALTORS®.

## Key Terms and Definitions

- \* **Biases:** Bias is a disproportionate weight in favor of or against an idea or thing, usually in a way that is closed-minded, prejudicial, or unfair. Biases can be innate or learned. People may develop biases for or against an individual, a group, or a belief.
- \* **Bias Blind Spot:** The bias blind spot is the cognitive bias of recognizing the impact of biases on the judgment of others, while failing to see the impact of biases on one's own judgment.
- \* **Implicit Biases:** In social identity theory, an implicit bias or implicit stereotype, is the pre-reflective attribution of particular qualities by an individual to a member of some social out group.
- \* **Unconscious Biases:** Unconscious biases are social stereotypes about certain groups of people that individuals form outside their own conscious awareness. Everyone holds **unconscious** beliefs about various social and identity groups, and these **biases** stem from one's tendency to organize social worlds by categorizing.

## The One America Initiative

One America in the 21st Century: The President's Initiative on Race, or more simply known as the One America Initiative, was established by U.S. President Bill Clinton in 1997. The main thrust of the effort was to encourage community dialogue and address racial and ethnic issues in a productive way.

"Fair Housing for ALL - "One America Principle"

- \* I welcome you and want to do business with you.
- \* I will base my decision and opinions of you on who you are, not on any preconceived stereotypes or ingrained value judgments.
- \* I subscribe to the federal Fair Housing Act and its principles.
- \* I embrace and celebrate the strength that diversity brings to our communities and our nation.
- \* I will help you find opportunities to buy the home you choose.
- \* I will market homeownership to the public and reach out to people who may not know that homeownership is a realistic option.

- \* I will make sure you know there is a full range of housing choices available to you, and encourage you to consider all communities and neighborhoods.
- \* I will make every effort to maintain open two-way communication. If we do not share a common language, I will work with you to find someone who can interpret.
- \* I have incorporated these principles in my daily operations and my overall business plan. I would be proud to share the plan with you.
- \* I am here to help you meet your real estate needs because you are the reason I am in business.
- \* Please let me know about any cultural or special needs that you have so that our business relationship will be comfortable and successful.

## Discrimination Against People with Disabilities

Structural inequality takes on a whole new meaning when looking at fair housing from the point of view of people with disabilities. In fact, according to the National Fair Housing Alliance's (NFHA) *2020 Fair Housing Trends Report*, "complaints alleging discrimination on the basis of disability continued to constitute the largest percentage of complaints at 58.90 percent." One reason given for the larger number of complaints in this area is that discrimination based on disability is usually obvious and therefore easier to describe in a complaint. Discrimination against other protected classes is generally more subtle and therefore harder to detect and report. As with other types of discrimination complaints, rental-related complaints make up the majority of all transaction types of complaints for people with disabilities.

The two major federal civil rights laws prohibiting housing discrimination against people with disabilities are the Fair Housing Act (FHA), which became law in 1968 and was amended in 1988 to include people with disabilities, and the Americans with Disabilities Act (ADA), which was enacted in 1990. Both of these laws share the goal of preventing discrimination by requiring reasonable accommodations and modifications to allow individuals with disabilities to have the full use and enjoyment of their dwelling and any associated common areas. However, there are significant differences between each law that will be reviewed in detail in the next chapter.

## In Conclusion

Real estate license holders have a fiduciary duty to their client and must treat all other parties to a transaction fairly and honestly [TREC rule §535.156]. This

means that the agent must place the principal's interest above all others — even their own. If there is any conflict of interest, it is the license holder's duty to divulge it to the client. Personal feelings, emotions and opinions create bias behavior that may conflict with the fiduciary responsibility owed to the client.

# LANDLORD-TENANT ISSUES AND PROPERTY MANAGEMENT

## Learning Objectives

After this chapter, you will be able to

- Understand certain bills passed by the 2021 Texas Legislature relating to property management.
- Identify and understand similarities and differences in the laws that protect people with disabilities from housing discrimination.
- Provide examples of an accommodation, a modification, and a public accommodation.



## Legislative Changes Affecting Property Management

There were several bills enacted by the 87th Texas Legislature affecting property management activities.

**Senate Bill 1588** - Relating to the powers and duties of certain property owners' associations. Except as otherwise provided, the effective date of this law is September 1, 2021.

SB 1588 makes substantial changes to multiple provisions of the Texas Property Code relevant to POAs, including amending section 209.016, Regulation of Residential Leases or Rental Agreements. The bill repeals subsections (a) and (c) regarding the ability to redact sensitive personal information from a lease or rental agreement if a copy is required. This bill adds a new subsection that allows a POA to request contact information for each person who will reside at a

property in the subdivision under a lease and the commencement date and term of the lease.

**House Bill 531** - Relating to notice requirements for a leased dwelling located in a floodplain. The effective date of this bill is January 1, 2022.

HB 531 amends Chapter 92, Property Code, by requiring that a landlord of a residential rental property provide a separate, written notice to a tenant indicating whether the landlord is aware or not of the property being located in a 100-year floodplain.

If a landlord knows that flooding has damaged any portion of a dwelling at least once during the five-year period immediately preceding the effective date of the lease, an additional separate, written notice must be provided.

Both of these notices must be provided at or before execution of the lease.

The bill provides for the termination of a lease by a tenant if the landlord does not provide these notices as required and the tenant suffers “substantial loss or damage” to the tenant’s personal property as a result.

**Senate Bill 1783** – Relating to a fee collected by a landlord in lieu of a security deposit. The effective date of this bill is September 1, 2021.

This bill amends Chapter 92, Property Code, and provides a process by which the landlord may choose to offer the tenant an option to pay a fee in lieu of a security deposit, as long as certain steps are followed.

## **Housing Discrimination Against People with Disabilities**

Both the Fair Housing Act and the Americans with Disabilities Act protect people with disabilities against housing discrimination. However, there are differences in the two laws, including what is covered and who pays for changes.

## **Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA)**

Although these laws have been in place for over 30 years, people with disabilities continue to experience the highest rate of discrimination in housing transactions. According to the National Fair Housing Alliance’s (NFHA) *2019 Fair Housing Trends Report*, the number of housing discrimination complaints in 2018 increased by 8 percent to 31,202, the highest since NFHA began producing the report in 1995. Complaints of discrimination based on disability represent 56.3% of these. NFHA’s full report is online at <https://nationalfairhousing.org/wp-content/uploads/2019/10/2019-Trends-Report.pdf>. The FHA and the ADA share the goal of preventing discrimination by requiring reasonable accommodations and modifications to allow individuals with disabilities to have the full use and enjoyment of their dwelling and any associated common areas. Understanding the differences in the laws will help license holders and clients avoid discrimination complaints and the potential to incur costly fines.

## **What is Considered a Disability Under the Law?**

The FHA and ADA have similar definitions for “disability,” although the FHA uses the term “handicap” instead of disability. Both laws define a person with a disability as an individual with a physical or mental impairment that substantially limits one or more major life activities, an individual who is regarded as having such an impairment, or an individual who has a record of such an impairment. The federal interpretation of what constitutes a physical or mental impairment is

broad and includes any ailment or condition as long as it “substantially limits” a “major life activity.” This includes alcohol or drug addiction so long as it does not involve current illegal drug use. The U.S. Department of Justice’s (DOJ) Civil Rights Division has interpreted a major life activity to be “those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, and speaking.” They interpret “substantially limits” to mean “the limitation is ‘significant’ or ‘to a large degree.’ ”

## **What is Covered?**

The FHA covers almost all public and private housing transactions and prohibits housing providers from discriminating against housing applicants or residents because of their disability or the disability of someone associated with them.

Examples of discrimination against a person with a disability would be when the owner, landlord, property manager, property owners’ association (POA), or real estate license holder:

- \* refuses to sell or rent to that person;
- \* refuses to make reasonable accommodations in rules, policies, or services;
- \* refuses to allow a reasonable modification of the premises; or imposes different terms, conditions, or deposits on that person.

The ADA prohibits discrimination in places of “public accommodation.” A “public accommodation” is a business that is generally open to the public, and includes places of exercise or recreation, public places of gathering, libraries, or laundromats, which could be found in apartment complexes, residential subdivisions, or condominium complexes. A private homeowner’s community is not subject to the ADA unless the common facilities are open to the public.

## **Reasonable Accommodations vs. Reasonable Modifications under the FHA & ADA Accessibility**

### **Reasonable Accommodations**

The DOJ and the U.S. Department of Housing and Urban Development (HUD) have issued a joint statement that provides technical assistance regarding reasonable accommodations under the FHA and the rights and obligations of housing providers and individuals with disabilities. This useful resource is online at [https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint\\_statement\\_ra.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf). They define a “reasonable accommodation” as “a change, exception, or adjustment to a rule, policy, practice, or service



that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common-use spaces.” A housing provider must make a requested reasonable accommodation if there is a nexus between the requested accommodation and the individual’s disability. Here are some examples.

- \* An apartment complex has a “no pets” policy. The policy is waived for a blind person so their guide dog can live with them.
- \* A property manager’s policy requires tenants to pay rent at the property manager’s office in person each month. A tenant has a mental disability that causes the tenant to fear leaving their own premises. The policy is altered to allow this tenant to have a friend deliver the rent check to the property manager.

### Reasonable Modifications

The DOJ and HUD have also issued a joint statement that provides technical assistance regarding reasonable modifications under the FHA and the rights and obligations of housing providers and individuals with disabilities. That statement is online at [https://www.hud.gov/sites/documents/reasonable\\_modifications\\_mar08.pdf](https://www.hud.gov/sites/documents/reasonable_modifications_mar08.pdf).

This statement says a reasonable modification is “a structural change made to existing premises, occupied or to be occupied by a person with a disability, to afford such person full enjoyment of the premises. Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas.”

Again, there must be an identifiable relationship between the requested modification and the individual’s disability; otherwise, the housing provider does not have to allow it. Examples of a reasonable modification are:

- \* installing visual doorbells or fire alarms for a tenant who is hearing impaired, or
- \* installing a ramp for access to a POA’s community clubhouse that has several steps, so a homeowner in a wheelchair can enjoy that amenity.

### ADA Accessibility

Remember, that beyond any reasonable accommodations or modifications, the ADA requires places of public accommodation to maintain certain accessibility features or to remove architectural barriers to allow individuals with disabilities equal access. These standards are set out in the ADA Accessibility Guidelines (ADAAG). Examples include:

- \* An POA installing a wheel chair lift on the pool deck at the community’s swimming pool that is available for rent by school groups, or

- \* A home builder modifying the bathroom in a model home to be wheelchair accessible.

These distinctions are important because there is a difference in who pays depending on the type of alteration and whether an alteration falls under the FHA or ADA.

### Who Pays?

Under the FHA, the housing provider is responsible for any cost associated with a reasonable accommodation unless the housing provider can prove that the accommodation would cause an undue financial or administrative burden. The housing provider cannot charge the individual with a disability additional fees or rent because of the accommodation.

The cost of a reasonable modification, on the other hand, is borne by the individual with the disability. The housing provider can request proof of financial ability to pay for a significant modification and require individuals to pay for the removal of the modification when they move out.

The housing provider is usually responsible for maintenance of the modifications made to common areas. However, if an individual requests a modification that the housing provider should have already made under the ADA, the housing provider is responsible for the cost.

The ADA requires the housing provider to pay for all modifications for public accommodations. To illustrate how a fact pattern can change who pays for the modification under these acts, consider a scenario where a POA owns and maintains a community pool. If the pool is available only to that community’s home owners, then a homeowner in a wheelchair who requests a modification for a pool lift chair will have to pay for it, because the modification falls under only the FHA. However, if the POA rents the pool out to members of the public for private events, allows general membership, or holds public swim meets at the pool, then it could be considered a public accommodation under the ADA. In this case, the POA would be required to pay for the installation of the pool lift chair.

### Reactive vs. Proactive Accommodations

FHA accommodation provisions are reactive. That means housing providers are not required to make any reasonable accommodation or modification unless requested by a person with a disability. Housing providers should be aware that there are no formal requirements for any such request. No specific words need to be used, and the request is not required to be in writing (although this is always the best practice).

ADA requirements, on the other hand, are proactive.

Housing providers who have public accommodations must meet the ADA standards for accessibility whether a request is made by an individual with a disability or not.

### **Inquiries and Action**

Once a housing provider receives a request, what questions can the housing provider ask, and what is “reasonable”? The housing provider may request additional information regarding the request only if the disability is not obvious or the relationship between the disability and the requested accommodation or modification is not clear. Although housing providers may ask for documents to confirm that the disability falls under the FHA’s definition of “handicap” or “disability,” they may not request medical records or specific details of the disability.

The housing provider may also ask for an explanation from the requester or documentation from a third party regarding how the requested accommodation or modification will help the requester overcome an effect of their disability. In their joint statement, the DOJ and HUD note that an accommodation request is considered reasonable unless “it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the housing provider’s operations. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the housing provider, the benefits the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester’s disability-related needs.” A housing provider who claims that an accommodation is not reasonable is encouraged to work with the requester to find an alternative accommodation that is acceptable to both parties.

### **Who Enforces?**

The DOJ enforces the ADA, and the DOJ and HUD are jointly responsible for enforcing the FHA. HUD has certified that the Texas Fair Housing Act is substantially similar to the FHA, so complaints in most of Texas are received and enforced by the Texas Workforce Commission’s (TWC) Civil Rights Division. Fair Housing complaints from Austin, Corpus Christi, Dallas, Fort Worth, and Garland are handled by each city’s fair housing office. Housing providers should be aware of any additional requirements imposed by their local jurisdiction. Individuals can also file a civil lawsuit in federal district court. Both HUD and TWC try to facilitate a resolution where possible between the housing provider and the individual with the disability. This practice benefits both

parties since litigation takes time and money, and fines for housing providers who do not follow the law can be substantial.

### **Kahoot! Quiz**

This chapter discussed reasonable accommodations, modifications, and ADA accessibility requirements for people with disabilities. Let’s test your memory.

Which category do the following adaptations fall under – a reasonable accommodation, or a reasonable modification?



1. A housing provider allows an existing tenant’s son with a disability, who cannot live independently, to reside at an age-55-and-older property with the tenant.
2. A housing provider replaces doorknob with door levers for a tenant who has severe arthritis.
3. An apartment manager allows a tenant with a mobility disability to transfer from an upper-level apartment to a lower level apartment.
4. A housing provider lowers the counters and cabinets in the apartment kitchen of a tenant with a disability.
5. An apartment complex permits an assistance animal in a “no pets” building for a deaf person.

### **BONUS QUESTIONS**

1. Who pays for lowering the counters and cabinets in the apartment kitchen?
2. Who pays for the wheel chair lift at the community pool that is open to the general public?

# A

## PROMULGATED FORMS AND ADDENDA

 <p><b>TREC</b> TEXAS REAL ESTATE COMMISSION</p>	<p>PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)  <b>ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE)</b>                  NOTICE: Not For Use For Condominium Transactions</p>	<p>11-08-2021</p>  <p>EQUAL HOUSING OPPORTUNITY</p>
<p><b>1. PARTIES:</b> The parties to this contract are _____ (Seller) and _____ (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.</p> <p><b>2. PROPERTY:</b> The land, improvements and accessories are collectively referred to as the Property (Property).</p> <p>A. LAND: Lot _____ Block _____, _____ Addition, City of _____, _____, County of _____, Texas, known as _____ (address/zip code), or as described on attached exhibit.</p> <p>B. IMPROVEMENTS: The house, garage and all other fixtures and improvements attached to the above-described real property, including without limitation, the following <b>permanently installed and built-in items</b>, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas, mounts and brackets for televisions and speakers, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property attached to the above described real property.</p> <p>C. ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, security systems that are not fixtures, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and accessories. "Controls" includes Seller's transferable rights to the (i) software and applications used to access and control improvements or accessories, and (ii) hardware used solely to control improvements or accessories.</p> <p>D. EXCLUSIONS: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession: _____.</p> <p>E. RESERVATIONS: Any reservation for oil, gas, or other minerals, water, timber, or other interests is made in accordance with an attached addendum.</p> <p><b>3. SALES PRICE:</b></p> <p>A. Cash portion of Sales Price payable by Buyer at closing .....\$ _____</p> <p>B. Sum of all financing described in the attached: <input type="checkbox"/> Third Party Financing Addendum, <input type="checkbox"/> Loan Assumption Addendum, <input type="checkbox"/> Seller Financing Addendum .....\$ _____</p> <p>C. Sales Price (Sum of A and B) .....\$ _____</p> <p><b>4. LEASES:</b> Except as disclosed in this contract, Seller is not aware of any leases affecting the Property. After the Effective Date, Seller may not, without Buyer's written consent, create a new lease, amend any existing lease, or convey any interest in the Property. (Check all applicable boxes)</p> <p><input type="checkbox"/> A. RESIDENTIAL LEASES: The Property is subject to one or more residential leases and the Addendum Regarding Residential Leases is attached to this contract.</p> <p><input type="checkbox"/> B. FIXTURE LEASES: Fixtures on the Property are subject to one or more fixture leases (for example, solar panels, propane tanks, water softener, security system) and the Addendum Regarding Fixture Leases is attached to this contract.</p> <p><input type="checkbox"/> C. NATURAL RESOURCE LEASES: "Natural Resource Lease" means an existing oil and gas, mineral, water, wind, or other natural resource lease affecting the Property to which Seller is a party.</p> <p><input type="checkbox"/> (1) Seller has delivered to Buyer a copy of all the Natural Resource Leases.</p> <p><input type="checkbox"/> (2) Seller has not delivered to Buyer a copy of all the Natural Resource Leases. Seller shall provide to Buyer a copy of all the Natural Resource Leases within 3 days after the Effective Date. Buyer may terminate the contract within _____ days after the date the Buyer receives all the Natural Resource Leases and the earnest money shall be refunded to Buyer.</p>		

Initialed for identification by Buyer \_\_\_\_\_ and Seller \_\_\_\_\_

TREC NO. 20-16

**5. EARNEST MONEY AND TERMINATION OPTION:**

- A. DELIVERY OF EARNEST MONEY AND OPTION FEE: Within 3 days after the Effective Date, Buyer must deliver to \_\_\_\_\_, as escrow agent, at \_\_\_\_\_ (address): \$ \_\_\_\_\_ as earnest money and \$ \_\_\_\_\_ as the Option Fee. The earnest money and Option Fee shall be made payable to escrow agent and may be paid separately or combined in a single payment.
- (1) Buyer shall deliver additional earnest money of \$ \_\_\_\_\_ to escrow agent within \_\_\_\_\_ days after the Effective Date of this contract.
  - (2) If the last day to deliver the earnest money, Option Fee, or the additional earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money, Option Fee, or the additional earnest money, as applicable, is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday.
  - (3) The amount(s) escrow agent receives under this paragraph shall be applied first to the Option Fee, then to the earnest money, and then to the additional earnest money.
  - (4) Buyer authorizes escrow agent to release and deliver the Option Fee to Seller at any time without further notice to or consent from Buyer, and releases escrow agent from liability for delivery of the Option Fee to Seller. The Option Fee will be credited to the Sales Price at closing.
- B. TERMINATION OPTION: For nominal consideration, the receipt of which Seller acknowledges, and Buyer's agreement to pay the Option Fee within the time required, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within \_\_\_\_\_ days after the Effective Date of this contract (Option Period). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If Buyer gives notice of termination within the time prescribed: (i) the Option Fee will not be refunded and escrow agent shall release any Option Fee remaining with escrow agent to Seller; and (ii) any earnest money will be refunded to Buyer.
- C. FAILURE TO TIMELY DELIVER EARNEST MONEY: If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money.
- D. FAILURE TO TIMELY DELIVER OPTION FEE: If no dollar amount is stated as the Option Fee or if Buyer fails to deliver the Option Fee within the time required, Buyer shall not have the unrestricted right to terminate this contract under this paragraph 5.
- E. TIME: **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

**6. TITLE POLICY AND SURVEY:**

- A. TITLE POLICY: Seller shall furnish to Buyer at  Seller's  Buyer's expense an owner policy of title insurance (Title Policy) issued by \_\_\_\_\_ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
- (1) Restrictive covenants common to the platted subdivision in which the Property is located.
  - (2) The standard printed exception for standby fees, taxes and assessments.
  - (3) Liens created as part of the financing described in Paragraph 3.
  - (4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.
  - (5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
  - (6) The standard printed exception as to marital rights.
  - (7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
  - (8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements:
    - (i) will not be amended or deleted from the title policy; or
    - (ii) will be amended to read, "shortages in area" at the expense of  Buyer  Seller.
  - (9) The exception or exclusion regarding minerals approved by the Texas Department of Insurance.
- B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or 3 days before the Closing Date, whichever is earlier. If the Commitment and Exception Documents are not delivered within the time required, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

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C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only)

- (1) Within \_\_\_\_\_ days after the Effective Date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** If the existing survey or affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at  Seller's  Buyer's expense no later than 3 days prior to Closing Date.
- (2) Within \_\_\_\_\_ days after the Effective Date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.
- (3) Within \_\_\_\_\_ days after the Effective Date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.

D. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; disclosed in the Commitment other than items 6A(1) through (9) above; or which prohibit the following use or activity: \_\_\_\_\_.

Buyer must object the earlier of (i) the Closing Date or (ii) \_\_\_\_\_ days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived by Buyer. Provided Seller is not obligated to incur any expense, Seller shall cure any timely objections of Buyer or any third party lender within 15 days after Seller receives the objections (Cure Period) and the Closing Date will be extended as necessary. If objections are not cured within the Cure Period, Buyer may, by delivering notice to Seller within 5 days after the end of the Cure Period: (i) terminate this contract and the earnest money will be refunded to Buyer; or (ii) waive the objections. If Buyer does not terminate within the time required, Buyer shall be deemed to have waived the objections. If the Commitment or Survey is revised or any new Exception Document(s) is delivered, Buyer may object to any new matter revealed in the revised Commitment or Survey or new Exception Document(s) within the same time stated in this paragraph to make objections beginning when the revised Commitment, Survey, or Exception Document(s) is delivered to Buyer.

E. TITLE NOTICES:

(1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.

(2) MEMBERSHIP IN PROPERTY OWNERS ASSOCIATION(S): The Property  is  is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2A in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and all dedicatory instruments governing the establishment, maintenance, or operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instruments may be obtained from the county clerk. **You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in enforcement of the association's lien on and the foreclosure of the Property.**

Section 207.003, Property Code, entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including, but not limited to, restrictions, bylaws, rules and regulations, and a resale certificate from a property owners' association. A resale certificate contains information including, but not limited to, statements specifying the amount and frequency of regular assessments and the style and cause number of lawsuits to which the property owners' association is a party, other than lawsuits relating to unpaid ad valorem taxes of an individual member of the association. These documents must be made available to you by the property owners' association or the association's agent on your request.

**If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association(s) should be used.**

(3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services,

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Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.

- (4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.
- (5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.
- (6) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.
- (7) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, Seller must give Buyer written notice as required by §5.014, Property Code. An addendum containing the required notice shall be attached to this contract. ~~requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.~~
- (8) TRANSFER FEES: If the Property is subject to a private transfer fee obligation, §5.205, Property Code, requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.
- (9) PROPANE GAS SYSTEM SERVICE AREA: If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Buyer written notice as required by §141.010, Texas Utilities Code. An addendum containing the notice approved by TREC or required by the parties should be used.
- (10) NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."

## 7. PROPERTY CONDITION:

- A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Any hydrostatic testing must be separately authorized by Seller in writing. Seller at Seller's expense shall immediately cause existing utilities to be turned on and shall keep the utilities on during the time this contract is in effect.
- B. SELLER'S DISCLOSURE NOTICE PURSUANT TO §5.008, TEXAS PROPERTY CODE (Notice):  
(Check one box only)
- (1) Buyer has received the Notice.
- (2) Buyer has not received the Notice. Within \_\_\_\_\_ days after the Effective Date of this contract, Seller shall deliver the Notice to Buyer. If Buyer does not receive the Notice,

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Buyer may terminate this contract at any time prior to the closing and the earnest money

will be refunded to Buyer. If Seller delivers the Notice, Buyer may terminate this contract for any reason within 7 days after Buyer receives the Notice or prior to the closing, whichever first occurs, and the earnest money will be refunded to Buyer.

- (3) The Seller is not required to furnish the notice under the Texas Property Code.
- C. SELLER'S DISCLOSURE OF LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS is required by Federal law for a residential dwelling constructed prior to 1978.
- D. ACCEPTANCE OF PROPERTY CONDITION: "As Is" means the present condition of the Property with any and all defects and without warranty except for the warranties of title and the warranties in this contract. Buyer's agreement to accept the Property As Is under Paragraph 7D(1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.  
(Check one box only)
- (1) Buyer accepts the Property As Is.
- (2) Buyer accepts the Property As Is provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: \_\_\_\_\_

(Do not insert general phrases, such as "subject to inspections" that do not identify specific repairs and treatments.)

- E. LENDER REQUIRED REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, neither party is obligated to pay for lender required repairs, which includes treatment for wood destroying insects. If the parties do not agree to pay for the lender required repairs or treatments, this contract will terminate and the earnest money will be refunded to Buyer. If the cost of lender required repairs and treatments exceeds 5% of the Sales Price, Buyer may terminate this contract and the earnest money will be refunded to Buyer.
- F. COMPLETION OF REPAIRS AND TREATMENTS: Unless otherwise agreed in writing: (i) Seller shall complete all agreed repairs and treatments prior to the Closing Date; and (ii) all required permits must be obtained, and repairs and treatments must be performed by persons who are licensed to provide such repairs or treatments or, if no license is required by law, are commercially engaged in the trade of providing such repairs or treatments. At Buyer's election, any transferable warranties received by Seller with respect to the repairs and treatments will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs and treatments prior to the Closing Date, Buyer may exercise remedies under Paragraph 15 or extend the Closing Date up to 5 days if necessary for Seller to complete the repairs and treatments.
- G. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.
- H. RESIDENTIAL SERVICE CONTRACTS: Buyer may purchase a residential service contract from a residential service company [~~licensed by TREC~~]. If Buyer purchases a residential service contract, Seller shall reimburse Buyer at closing for the cost of the residential service contract in an amount not exceeding \$\_\_\_\_\_. Buyer should review any residential service contract for the scope of coverage, exclusions and limitations. **The purchase of a residential service contract is optional. Similar coverage may be purchased from various companies authorized to do business in Texas.**

## 8. BROKERS AND SALES AGENTS:

- A. BROKER OR SALES AGENT DISCLOSURE: Texas law requires a real estate broker or sales agent who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the broker or sales agent owns more than 10%, or a trust for which the broker or sales agent acts as a trustee or of which the broker or sales agent or the broker or sales agent's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: \_\_\_\_\_
- B. BROKERS' FEES: All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

## 9. CLOSING:

- A. The closing of the sale will be on or before \_\_\_\_\_, 20\_\_\_\_, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.
- B. At closing:
- (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish

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tax statements or certificates showing no delinquent taxes on the Property.

(2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.

(3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.

(4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.

#### 10. POSSESSION:

A. BUYER'S POSSESSION: Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted:  upon closing and funding  according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. **Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.**

B. SMART DEVICES: "Smart Device" means a device that connects to the internet to enable remote use, monitoring, and management of: (i) the Property; (ii) items identified in any Non-Realty Items Addendum; or (iii) items in a Fixture Lease assigned to Buyer. At the time Seller delivers possession of the Property to Buyer, Seller shall:

(1) deliver to Buyer written information containing all access codes, usernames, passwords, and applications Buyer will need to access, operate, manage, and control the Smart Devices; and

(2) terminate and remove all access and connections to the improvements and accessories from any of Seller's personal devices including but not limited to phones and computers.

**11. SPECIAL PROVISIONS:** (Insert only factual statements and business details applicable to the sale. TREC rules prohibit license holders from adding factual statements or business details for which a contract addendum, lease or other form has been promulgated by TREC for mandatory use.)

#### 12. SETTLEMENT AND OTHER EXPENSES:

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

(a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.

(b) Seller shall also pay an amount not to exceed \$\_\_\_\_\_ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

**13. PRORATIONS:** Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.



- 14. CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the Effective Date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds, if permitted by Seller's insurance carrier, and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.
- 15. DEFAULT:** If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If Seller fails to comply with this contract, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.
- 16. MEDIATION:** It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.
- 17. ATTORNEY'S FEES:** A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.
- 18. ESCROW:**
- A. **ESCROW:** The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent. Escrow agent may require any disbursement made in connection with this contract to be conditioned on escrow agent's collection of good funds acceptable to escrow agent.
  - B. **EXPENSES:** At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties; and (ii) require payment of unpaid expenses incurred on behalf of a party. Escrow agent may deduct authorized expenses from the earnest money payable to a party. "Authorized expenses" means expenses incurred by escrow agent on behalf of the party entitled to the earnest money that were authorized by this contract or that party.
  - C. **DEMAND:** Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursement of the earnest money.
  - D. **DAMAGES:** Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for (i) damages; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
  - E. **NOTICES:** Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.
- 19. REPRESENTATIONS:** All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.
- 20. FEDERAL TAX REQUIREMENTS:** If Seller is a "foreign person," as defined by Internal Revenue Code and its regulations, or if Seller fails to deliver an affidavit or a certificate of non-foreign status to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

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**21. NOTICES:** All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by fax or electronic transmission as follows:

**To Buyer at:** \_\_\_\_\_

**To Seller at:** \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

**22. AGREEMENT OF PARTIES:** This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (Check all applicable boxes):

- Third Party Financing Addendum
- Seller Financing Addendum
- Addendum for Property Subject to Mandatory Membership in a Property Owners Association
- Buyer's Temporary Residential Lease
- Loan Assumption Addendum
- Addendum for Sale of Other Property by Buyer
- Addendum for Reservation of Oil, Gas and Other Minerals
- Addendum for "Back-Up" Contract
- Addendum for Coastal Area Property
- Addendum for Authorizing Hydrostatic Testing
- Addendum Concerning Right to Terminate Due to Lender's Appraisal
- Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum
- Seller's Temporary Residential Lease
- Short Sale Addendum
- Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law
- Addendum for Property in a Propane Gas System Service Area
- Addendum Regarding Residential Leases
- Addendum Regarding Fixture Leases
- [Addendum containing Notice of Obligation to Pay Improvement District Assessment](#)
- Other (list): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**23. CONSULT AN ATTORNEY BEFORE SIGNING:** TREC rules prohibit real estate license holders from giving legal advice. READ THIS CONTRACT CAREFULLY.

Buyer's Attorney is: \_\_\_\_\_

Seller's Attorney is: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

E-mail: \_\_\_\_\_

E-mail: \_\_\_\_\_

**EXECUTED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (Effective Date).  
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Seller



The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate license holders. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 936-3000 (<http://www.trec.texas.gov>) TREC NO. 20-~~16~~<sup>15</sup>. This form replaces TREC NO. 20-~~15~~<sup>14</sup>.

**BROKER INFORMATION**  
 (Print name(s) only. Do not sign)

Other Broker Firm \_\_\_\_\_ License No. \_\_\_\_\_

represents  Buyer only as Buyer's agent  
 Seller as Listing Broker's subagent

Listing Broker Firm \_\_\_\_\_ License No. \_\_\_\_\_

represents  Seller and Buyer as an intermediary  
 Seller only as Seller's agent

Associate's Name \_\_\_\_\_ License No. \_\_\_\_\_

Team Name \_\_\_\_\_

Associate's Email Address \_\_\_\_\_ Phone \_\_\_\_\_

Licensed Supervisor of Associate \_\_\_\_\_ License No. \_\_\_\_\_

Other Broker's Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Listing Associate's Name \_\_\_\_\_ License No. \_\_\_\_\_

Team Name \_\_\_\_\_

Listing Associate's Email Address \_\_\_\_\_ Phone \_\_\_\_\_

Licensed Supervisor of Listing Associate \_\_\_\_\_ License No. \_\_\_\_\_

Listing Broker's Office Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Selling Associate's Name \_\_\_\_\_ License No. \_\_\_\_\_

Team Name \_\_\_\_\_

Selling Associate's Email Address \_\_\_\_\_ Phone \_\_\_\_\_

Licensed Supervisor of Selling Associate \_\_\_\_\_ License No. \_\_\_\_\_

Selling Associate's Office Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Disclosure: Pursuant to a previous, separate agreement (such as a MLS offer of compensation or other agreement between brokers), Listing Broker has agreed to pay Other Broker a fee (\_\_\_\_\_). This disclosure is for informational purposes and does not change the previous agreement between brokers to pay or share a commission.



**OPTION FEE RECEIPT**

Receipt of \$ \_\_\_\_\_ (Option Fee) in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent \_\_\_\_\_ Date \_\_\_\_\_

**EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ Earnest Money in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date/Time \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

**CONTRACT RECEIPT**

Receipt of the Contract is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

**ADDITIONAL EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ additional Earnest Money in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date/Time \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)
ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE)

11-10-2020 [2-12-18]



NOTICE: Not For Use For Condominium Transactions

1. PARTIES: The parties to this contract are \_\_\_\_\_ (Seller) and \_\_\_\_\_ (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. PROPERTY: The land, improvements and accessories are collectively referred to as the [^] Property[^] (Property).

A. LAND: Lot \_\_\_\_\_ Block \_\_\_\_\_, \_\_\_\_\_ Addition, City of \_\_\_\_\_, County of \_\_\_\_\_, Texas, known as \_\_\_\_\_ (address/zip code), or as described on attached exhibit.

B. IMPROVEMENTS: The house, garage and all other fixtures and improvements attached to the above-described real property, including without limitation, the following permanently installed and built-in items, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas, mounts and brackets for televisions and speakers, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property [owned by Seller and] attached to the above described real property.

C. ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, security systems that are not fixtures, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and accessories. "Controls" includes Seller's transferable rights to the (i) software and applications used to access and control improvements or accessories, and (ii) hardware used solely to control improvements or accessories.

D. EXCLUSIONS: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession: \_\_\_\_\_

E. RESERVATIONS: Any reservation for oil, gas, or other minerals, water, timber, or other interests is made in accordance with an attached addendum.

3. SALES PRICE:

A. Cash portion of Sales Price payable by Buyer at closing ..... \$ \_\_\_\_\_

B. Sum of all financing described in the attached: [ ] Third Party Financing Addendum, [ ] Loan Assumption Addendum, [ ] Seller Financing Addendum ..... \$ \_\_\_\_\_

C. Sales Price (Sum of A and B)..... \$ \_\_\_\_\_

4. LEASES: Except as disclosed in this contract, Seller is not aware of any leases affecting the Property. After the Effective Date, Seller may not, without Buyer's written consent, create a new lease, amend any existing lease, or convey any interest in the Property. (Check all applicable boxes)

[ ] A. RESIDENTIAL LEASES: The Property is subject to one or more residential leases and the Addendum Regarding Residential Leases is attached to this contract.

[ ] B. FIXTURE LEASES: Fixtures on the Property are subject to one or more fixture leases (for example, solar panels, propane tanks, water softener, security system) and the Addendum Regarding Fixture Leases is attached to this contract.

[ ] C. NATURAL RESOURCE LEASES: "Natural Resource Lease" means an existing oil and gas, mineral, water, wind, or other natural resource lease affecting the Property to which Seller is a party.

[ ](1) Seller has delivered to Buyer a copy of all the Natural Resource Leases.

[ ](2) Seller has not delivered to Buyer a copy of all the Natural Resource Leases. Seller shall provide to Buyer a copy of all the Natural Resource Leases within 3 days after the Effective Date. Buyer may terminate the contract within \_\_\_\_\_ days after the date the Buyer receives all the Natural Resource Leases and the earnest money shall be refunded to Buyer.

[LICENSE HOLDER DISCLOSURE: Texas law requires a real estate license holder who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the license holder owns more than 10%, or a trust for which the license holder acts as a trustee or of which the license holder or the license holder's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: \_\_\_\_\_]

Initialed for identification by Buyer \_\_\_\_\_ and Seller \_\_\_\_\_ TREC NO. 20-15 [20-14]

(Address of Property)

**5. EARNEST MONEY AND TERMINATION OPTION:**

A. DELIVERY OF EARNEST MONEY AND OPTION FEE: Within 3 days after the Effective Date, Buyer must deliver to \_\_\_\_\_, as escrow agent, at \_\_\_\_\_

(address): \$ \_\_\_\_\_ as earnest money and \$ \_\_\_\_\_ as the Option Fee. The earnest money and Option Fee shall be made payable to escrow agent and may be paid separately or combined in a single payment.

(1) Buyer shall deliver additional earnest money of \$ \_\_\_\_\_ to escrow agent within \_\_\_\_\_ days after the Effective Date of this contract.

(2) If the last day to deliver the earnest money, Option Fee, or the additional earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money, Option Fee, or the additional earnest money, as applicable, is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(3) The amount(s) escrow agent receives under this paragraph shall be applied first to the Option Fee, then to the earnest money, and then to the additional earnest money.

(4) Buyer authorizes escrow agent to release and deliver the Option Fee to Seller at any time without further notice to or consent from Buyer, and releases escrow agent from liability for delivery of the Option Fee to Seller. The Option Fee will be credited to the Sales Price at closing.

B. TERMINATION OPTION: For nominal consideration, the receipt of which Seller acknowledges, and Buyer's agreement to pay the Option Fee within the time required, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within \_\_\_\_\_ days after the Effective Date of this contract (Option Period). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If Buyer gives notice of termination within the time prescribed: (i) the Option Fee will not be refunded and escrow agent shall release any Option Fee remaining with escrow agent to Seller; and (ii) any earnest money will be refunded to Buyer.

C. FAILURE TO TIMELY DELIVER EARNEST MONEY: If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money.

D. FAILURE TO TIMELY DELIVER OPTION FEE: If no dollar amount is stated as the Option Fee or if Buyer fails to deliver the Option Fee within the time required, Buyer shall not have the unrestricted right to terminate this contract under this paragraph 5.

E. TIME: Time is of the essence for this paragraph and strict compliance with the time for performance is required.

~~[EARNEST MONEY: Within 3 days after the Effective Date, Buyer must deliver \$ \_\_\_\_\_ as earnest money to \_\_\_\_\_, as escrow agent, at \_\_\_\_\_ (address). Buyer shall deliver additional earnest money of \$ \_\_\_\_\_ to escrow agent within \_\_\_\_\_ days after the Effective Date of this contract. If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money. If the last day to deliver the earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday. Time is of the essence for this paragraph.]~~

**6. TITLE POLICY AND SURVEY:**

A. TITLE POLICY: Seller shall furnish to Buyer at  Seller's  Buyer's expense an owner policy of title insurance (Title Policy) issued by \_\_\_\_\_ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:

- (1) Restrictive covenants common to the platted subdivision in which the Property is located.
- (2) The standard printed exception for standby fees, taxes and assessments.
- (3) Liens created as part of the financing described in Paragraph 3.
- (4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.
- (5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
- (6) The standard printed exception as to marital rights.
- (7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
- (8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements:

- (i) will not be amended or deleted from the title policy; or
- (ii) will be amended to read, "shortages in area" at the expense of  Buyer  Seller.

Initialed for identification by Buyer \_\_\_\_\_ and Seller \_\_\_\_\_ TREC NO. 20-15 [20-14]

(Address of Property)

- (9) The exception or exclusion regarding minerals approved by the Texas Department of Insurance.
- B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or 3 days before the Closing Date, whichever is earlier. If the Commitment and Exception Documents are not delivered within the time required, Buyer may terminate this contract and the earnest money will be refunded to Buyer.
- C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only)
- (1) Within \_\_\_\_\_ days after the Effective Date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** If the existing survey or affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at  Seller's  Buyer's expense no later than 3 days prior to Closing Date.
  - (2) Within \_\_\_\_\_ days after the Effective Date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.
  - (3) Within \_\_\_\_\_ days after the Effective Date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.
- D. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; disclosed in the Commitment other than items 6A(1) through (9) above; or which prohibit the following use or activity: \_\_\_\_\_  
Buyer must object the earlier of (i) the Closing Date or (ii) \_\_\_\_\_ days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived by Buyer. Provided Seller is not obligated to incur any expense, Seller shall cure any timely objections of Buyer or any third party lender within 15 days after Seller receives the objections (Cure Period) and the Closing Date will be extended as necessary. If objections are not cured within the Cure Period, Buyer may, by delivering notice to Seller within 5 days after the end of the Cure Period: (i) terminate this contract and the earnest money will be refunded to Buyer; or (ii) waive the objections. If Buyer does not terminate within the time required, Buyer shall be deemed to have waived the objections. If the Commitment or Survey is revised or any new Exception Document(s) is delivered, Buyer may object to any new matter revealed in the revised Commitment or Survey or new Exception Document(s) within the same time stated in this paragraph to make objections beginning when the revised Commitment, Survey, or Exception Document(s) is delivered to Buyer.
- E. TITLE NOTICES:
- (1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.
  - (2) MEMBERSHIP IN PROPERTY OWNERS ASSOCIATION(S): The Property  is  is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2A in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and all dedicatory instruments governing the establishment, maintenance, or operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instruments may be obtained from the county clerk. **You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in enforcement of the association's lien on and the**

Initialed for identification by Buyer \_\_\_\_\_ and Seller \_\_\_\_\_

TREC NO. 20-15 [20-14]



(Address of Property)

**foreclosure of the Property.**

Section 207.003, Property Code, entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including, but not limited to, restrictions, bylaws, rules and regulations, and a resale certificate from a property owners' association. A resale certificate contains information including, but not limited to, statements specifying the amount and frequency of regular assessments and the style and cause number of lawsuits to which the property owners' association is a party, other than lawsuits relating to unpaid ad valorem taxes of an individual member of the association. These documents must be made available to you by the property owners' association or the association's agent on your request.

**If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association(s) should be used.**

- (3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.
- (4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.
- (5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.
- (6) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.
- (7) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.
- (8) TRANSFER FEES: If the Property is subject to a private transfer fee obligation, §5.205, Property Code, requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.
- (9) PROPANE GAS SYSTEM SERVICE AREA: If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Buyer written notice as required by §141.010, Texas Utilities Code. An addendum containing the notice approved by TREC or required by the parties should be used.
- (10) NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the

Initialed for identification by Buyer \_\_\_\_\_ and Seller \_\_\_\_\_ TREC NO. ~~20-15~~ [20-14]

(Address of Property.)  
impoundment; or (2) drought or flood conditions."

**7. PROPERTY CONDITION:**

A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Any hydrostatic testing must be separately authorized by Seller in writing. Seller at Seller's expense shall immediately cause existing utilities to be turned on and shall keep the utilities on during the time this contract is in effect.

B. SELLER'S DISCLOSURE NOTICE PURSUANT TO §5.008, TEXAS PROPERTY CODE (Notice):

(Check one box only)

- (1) Buyer has received the Notice.
- (2) Buyer has not received the Notice. Within \_\_\_\_\_ days after the Effective Date of this contract, Seller shall deliver the Notice to Buyer. If Buyer does not receive the Notice, Buyer may terminate this contract at any time prior to the closing and the earnest money will be refunded to Buyer. If Seller delivers the Notice, Buyer may terminate this contract for any reason within 7 days after Buyer receives the Notice or prior to the closing, whichever first occurs, and the earnest money will be refunded to Buyer.
- (3) The Seller is not required to furnish the notice under the Texas Property Code.

C. SELLER'S DISCLOSURE OF LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS is required by Federal law for a residential dwelling constructed prior to 1978.

D. ACCEPTANCE OF PROPERTY CONDITION: "As Is" means the present condition of the Property with any and all defects and without warranty except for the warranties of title and the warranties in this contract. Buyer's agreement to accept the Property As Is under Paragraph 7D(1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.

(Check one box only)

- (1) Buyer accepts the Property As Is.
- (2) Buyer accepts the Property As Is provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: \_\_\_\_\_

(Do not insert general phrases, such as "subject to inspections" that do not identify specific repairs and treatments.)

E. LENDER REQUIRED REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, neither party is obligated to pay for lender required repairs, which includes treatment for wood destroying insects. If the parties do not agree to pay for the lender required repairs or treatments, this contract will terminate and the earnest money will be refunded to Buyer. If the cost of lender required repairs and treatments exceeds 5% of the Sales Price, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

F. COMPLETION OF REPAIRS AND TREATMENTS: Unless otherwise agreed in writing: (i) Seller shall complete all agreed repairs and treatments prior to the Closing Date; and (ii) all required permits must be obtained, and repairs and treatments must be performed by persons who are licensed to provide such repairs or treatments or, if no license is required by law, are commercially engaged in the trade of providing such repairs or treatments. At Buyer's election, any transferable warranties received by Seller with respect to the repairs and treatments will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs and treatments prior to the Closing Date, Buyer may exercise remedies under Paragraph 15 or extend the Closing Date up to 5 days if necessary for Seller to complete the repairs and treatments.

G. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.

H. RESIDENTIAL SERVICE CONTRACTS: Buyer may purchase a residential service contract from a residential service company licensed by TREC. If Buyer purchases a residential service contract, Seller shall reimburse Buyer at closing for the cost of the residential service contract in an amount not exceeding \$\_\_\_\_\_. Buyer should review any residential service contract for the scope of coverage, exclusions and limitations. **The purchase of a residential service contract is optional. Similar coverage may be purchased from various companies authorized to do business in Texas.**

**8. BROKERS AND SALES AGENTS:**

A. BROKER OR SALES AGENT DISCLOSURE: Texas law requires a real estate broker or sales agent who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the broker or sales agent owns more than 10%, or a trust for which the broker or sales agent acts as a trustee or of which the broker or sales agent or the broker or

(Address of Property)

sales agent's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable:

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

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

**9. CLOSING:**

A. The closing of the sale will be on or before \_\_\_\_\_, 20\_\_\_\_, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.

B. At closing:

- (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
- (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
- (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
- (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.

~~[(5) If the Property is subject to a residential lease, Seller shall transfer security deposits (as defined under §92.102, Property Code), if any, to Buyer. In such an event, Buyer shall deliver to the tenant a signed statement acknowledging that the Buyer has acquired the Property and is responsible for the return of the security deposit, and specifying the exact dollar amount of the security deposit.]~~

**10. POSSESSION:**

A. BUYER'S POSSESSION ~~[Buyer's Possession]~~: Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted:  upon closing and funding  according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. **Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.**

B. SMART DEVICES: "Smart Device" means a device that connects to the internet to enable remote use, monitoring, and management of: (i) the Property; (ii) items identified in any Non-Realty Items Addendum; or (iii) items in a Fixture Lease assigned to Buyer. At the time Seller delivers possession of the Property to Buyer, Seller shall:

- (1) deliver to Buyer written information containing all access codes, usernames, passwords, and applications Buyer will need to access, operate, manage, and control the Smart Devices; and
- (2) terminate and remove all access and connections to the improvements and accessories from any of Seller's personal devices including but not limited to phones and computers.

~~[Leases:~~

- ~~(1) After the Effective Date, Seller may not execute any lease (including but not limited to mineral leases) or convey any interest in the Property without Buyer's written consent.~~
- ~~(2) If the Property is subject to any lease to which Seller is a party, Seller shall deliver to Buyer copies of the lease(s) and any move-in condition form signed by the tenant within 7 days after the Effective Date of the contract.]~~

**11. SPECIAL PROVISIONS:** (Insert only factual statements and business details applicable to the sale. TREC rules prohibit license holders from adding factual statements or business details for which a contract addendum, lease or other form has been promulgated by TREC for mandatory use.)

**12. SETTLEMENT AND OTHER EXPENSES:**

A. The following expenses must be paid at or prior to closing:

- (1) Expenses payable by Seller (Seller's Expenses):
  - (a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.
  - (b) Seller shall also pay an amount not to exceed \$\_\_\_\_\_ to be applied in the

(Address of Property)

following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

- (2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

**13. PRORATIONS:** Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.

**14. CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the Effective Date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds, if permitted by Seller's insurance carrier, and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

**15. DEFAULT:** If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If Seller fails to comply with this contract, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

**16. MEDIATION:** It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

**17. ATTORNEY'S FEES:** A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.

**18. ESCROW:**

A. ESCROW: The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent. Escrow agent may require any disbursement made in connection with this contract to be conditioned on escrow agent's collection of good funds acceptable to escrow agent.

B. EXPENSES: At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties; [7] and (ii) require payment of unpaid expenses incurred on behalf of a party. [~~and (iii) only~~] Escrow agent may deduct authorized expenses from the earnest money payable to a party. "Authorized expenses" means [the amount of unpaid] expenses incurred by escrow agent on behalf of the party entitled [receiving] to the earnest money that were authorized by this

Initialed for identification by Buyer \_\_\_\_\_ and Seller \_\_\_\_\_

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(Address of Property)

[contract or that party.](#)

- C. **DEMAND:** Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursement of the earnest money.
- D. **DAMAGES:** Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for (i) damages; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- E. **NOTICES:** Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.

**19. REPRESENTATIONS:** All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

**20. FEDERAL TAX REQUIREMENTS:** If Seller is a "foreign person," as defined by Internal Revenue Code and its regulations, or if Seller fails to deliver an affidavit or a certificate of non-foreign status to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

**21. NOTICES:** All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by fax or electronic transmission as follows:

**To Buyer**  
at: \_\_\_\_\_

**To Seller**  
at: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

E-mail/Fax: [←→] \_\_\_\_\_

E-mail/Fax: [←→] \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

**22. AGREEMENT OF PARTIES:** This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (Check all applicable boxes):

- |   |  |
|---|--|
| <input type="checkbox"/> Third Party Financing Addendum   | <input type="checkbox"/> Seller's Temporary Residential Lease  |
| <input type="checkbox"/> Seller Financing Addendum  | <input type="checkbox"/> Short Sale Addendum   |
| <input type="checkbox"/> Addendum for Property Subject to Mandatory Membership in a Property Owners Association | <input type="checkbox"/> Addendum for Property Located Seaward of the Gulf Intracoastal Waterway   |
| <input type="checkbox"/> Buyer's Temporary Residential Lease  | <input type="checkbox"/> Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law |
| <input type="checkbox"/> Loan Assumption Addendum   | <input type="checkbox"/> Addendum for Property in a Propane Gas System Service Area  |
| <input type="checkbox"/> Addendum for Sale of Other Property by Buyer   | <input type="checkbox"/> <a href="#">Addendum Regarding Residential Leases</a>   |
| <input type="checkbox"/> Addendum for Reservation of Oil, Gas and Other Minerals                                | <input type="checkbox"/> <a href="#">Addendum Regarding Fixture Leases</a>   |
| <input type="checkbox"/> Addendum for "Back-Up" Contract  | <input type="checkbox"/> Other (list): _____   |
| <input type="checkbox"/> Addendum for Coastal Area Property   | _____  |
| <input type="checkbox"/> Addendum for Authorizing Hydrostatic Testing   | _____  |
| <input type="checkbox"/> Addendum Concerning Right to Terminate Due to Lender's Appraisal                       | _____  |
| <input type="checkbox"/> Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum       | _____  |

Initialed for identification by Buyer \_\_\_\_\_ and Seller \_\_\_\_\_

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~~[23. **TERMINATION OPTION:** For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller \$\_\_\_\_\_ (Option Fee) within 3 days after the Effective Date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within \_\_\_\_\_ days after the Effective Date of this contract (Option Period). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee  will  will not be credited to the Sales Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**]~~

~~23.~~ **[24.] CONSULT AN ATTORNEY BEFORE SIGNING:** TREC rules prohibit real estate license holders from giving legal advice. READ THIS CONTRACT CAREFULLY.

Buyer's Attorney is: \_\_\_\_\_

Seller's Attorney is: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

E-mail: \_\_\_\_\_

E-mail: \_\_\_\_\_

**EXECUTED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (Effective Date).  
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

Buyer \_\_\_\_\_

Seller \_\_\_\_\_

Buyer \_\_\_\_\_

Seller \_\_\_\_\_



The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate license holders. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 936-3000 (<http://www.trec.texas.gov>) TREC NO. 20-15 [20-14]. This form replaces TREC NO. 20-14 [20-13].

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**BROKER INFORMATION**  
(Print name(s) only. Do not sign)

\_\_\_\_\_  
Other Broker Firm License No.

represents  Buyer only as Buyer's agent  
 Seller as Listing Broker's subagent

\_\_\_\_\_  
Listing Broker Firm License No.

represents  Seller and Buyer as an intermediary  
 Seller only as Seller's agent

\_\_\_\_\_  
Associate's Name License No.

\_\_\_\_\_  
Team Name

\_\_\_\_\_  
Associate's Email Address Phone

\_\_\_\_\_  
Licensed Supervisor of Associate License No.

\_\_\_\_\_  
Other Broker's Address Phone

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Listing Associate's Name License No.

\_\_\_\_\_  
Team Name

\_\_\_\_\_  
Listing Associate's Email Address Phone

\_\_\_\_\_  
Licensed Supervisor of Listing Associate License No.

\_\_\_\_\_  
Listing Broker's Office Address Phone

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Selling Associate's Name License No.

\_\_\_\_\_  
Team Name

\_\_\_\_\_  
Selling Associate's Email Address Phone

\_\_\_\_\_  
Licensed Supervisor of Selling Associate License No.

\_\_\_\_\_  
Selling Associate's Office Address

\_\_\_\_\_  
City State Zip

Disclosure: Pursuant to a previous, separate agreement (such as a MLS offer of compensation or other agreement between brokers) Listing Broker has agreed to pay Other Broker a fee ( \_\_\_\_\_ ). This disclosure is for informational purposes and does not change the previous agreement between brokers to pay or share a commission. [Listing Broker has agreed to pay Other Broker \_\_\_\_\_ of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay Other Broker from Listing Broker's fee at closing.]

(Address of Property)

**OPTION FEE RECEIPT**

Receipt of \$ \_\_\_\_\_ (Option Fee) in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent [~~Seller or Listing Broker~~] \_\_\_\_\_ Date \_\_\_\_\_

**EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ Earnest Money in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date/Time \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

**CONTRACT RECEIPT**

Receipt of the Contract is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

**ADDITIONAL EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ additional Earnest Money in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date/Time \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_





**ADDENDUM REGARDING RESIDENTIAL LEASES**



**CONCERNING THE PROPERTY AT:** \_\_\_\_\_  
(Street Address and City)

"Residential Lease" means any lease of the Property to a tenant including any addendum, amendment, or move-in condition form.

Seller may not execute any new Residential Lease or amend any Residential Lease without Buyer's written consent. Existing Residential Leases will have the following status at closing. (Check only A or B)

- A. **Termination of Residential Leases:** All Residential Leases must be terminated by closing. Seller shall deliver possession of the Property in accordance with Paragraph 10 of the contract with no tenant or other person in possession or having rights to occupy the Property. **[Notice: This paragraph will not amend or terminate any existing lease. Consult an attorney and refer to the Residential Leases for rights to terminate before agreeing to this provision.]**
- B. **Assignment and Assumption of Residential Leases:** Existing Residential Leases shall be assigned by Seller and assumed by Buyer at closing.
  - (1) **Delivery of Residential Leases:** (Check one box only)
    - (a) Buyer has received a copy of all Residential Leases.
    - (b) Buyer has not received a copy of all Residential Leases. Seller shall provide a copy of the Residential Leases within 3 days after the Effective Date. Buyer may terminate the contract within \_\_\_\_\_ days after the date the Buyer receives the Residential Leases and the earnest money shall be refunded to Buyer.
  - (2) At closing, Seller shall transfer security deposits (as defined under §92.102, Property Code), if any, to Buyer. At closing, Buyer shall deliver to the tenant a signed statement acknowledging that the Buyer has acquired the Property and is responsible for the return of the security deposit, and specifying the exact dollar amount of the security deposit.
  - (3) Except as described below, and to Seller's knowledge for each Residential Lease:
    - (a) the Residential Lease is in full force and effect;
    - (b) no tenant is in default or in violation of the Residential Lease;
    - (c) no tenant has prepaid any rent;
    - (d) no tenant is entitled to any offset against rent;
    - (e) there are no outstanding tenant claims against Seller involving the Property;
    - (f) there are no pending disputes with any tenant or prior tenant; and
    - (g) there are no other agreements, options, or rights outside the Lease between Landlord and Tenant regarding the Property.

Explain if any of the above is not accurate (attach additional sheets if necessary): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (4) Seller will promptly notify Buyer if Seller learns that any statement in Paragraph B(3) becomes untrue after the Effective Date. Seller shall cure the condition making the statement untrue within 7 days after providing the notice to Buyer. If the statement remains untrue beyond the 7-day period, Buyer may, as Buyer's sole remedy, terminate the contract within 5 days after the expiration of the 7-day period, by delivering notice to the Seller and the earnest money will be refunded to Buyer. If Buyer does not terminate the contract within the time required, Buyer waives the right to terminate. The Closing Date will be extended daily as necessary to afford the parties their rights and time to provide notices under this paragraph.

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Seller



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**ADDENDUM REGARDING FIXTURE LEASES**



**CONCERNING THE PROPERTY AT:** \_\_\_\_\_  
(Street Address and City)

- A. Leased Fixtures are those fixtures in or on the Property that Seller leases and does not own, specifically the:  solar panels,  propane tanks,  water softener,  security system,  \_\_\_\_\_ (collectively, the Leased Fixtures). All rights to the Leased Fixtures are governed by Fixture Leases.
  - (1) Buyer shall assume, and Seller shall assign to Buyer the Fixture Leases at closing, except the following: \_\_\_\_\_. Buyer shall pay the first \$ \_\_\_\_\_ of any cost necessary to assume or receive an assignment of the Fixture Leases and Seller shall pay the remainder. Buyer and Seller agree to sign any documents required by the lessor in the Fixture Leases to assume or assign the Fixture Leases.
  - (2) Prior to closing, Seller  will  will not remove the Leased Fixtures covered by the Fixture Leases that Buyer does not assume. Seller will repair any damage to the Property caused by any removal. Notice: Any Leased Fixture remaining in the Property are subject to the rights of the lessor under the Fixture Lease.
- B. Delivery of Fixture Leases: (Check one box only)
  - (1) Buyer has received a copy of all Fixture Leases Buyer has agreed to assume.
  - (2) Buyer has not received a copy of all Fixture Leases Buyer has agreed to assume. Seller shall provide a copy of the Fixture Leases within 5 days after the Effective Date. Buyer may terminate the contract within 7 days after the date the Buyer receives the Fixture Leases and the earnest money shall be refunded to Buyer.
- C. At closing, there will be no liens or security interests against Leased Fixtures which will not be satisfied out of the sales proceeds except for Leased Fixtures covered by Fixture Leases Buyer agrees to assume.


**Notice: Seller and Buyer should consult with the lessor and their attorneys regarding the assignment, assumption, or termination of any Fixture Leases.**

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Seller

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**ADDENDUM CONTAINING NOTICE OF OBLIGATION  
TO PAY IMPROVEMENT DISTRICT  
ASSESSMENT TO \_\_\_\_\_, TEXAS**  
(insert name of municipality or county levying assessment)  
**CONCERNING THE FOLLOWING PROPERTY**

\_\_\_\_\_  
(insert property address)

As the purchaser of the real property described above, you are obligated to pay assessments to \_\_\_\_\_, Texas, for the costs of a portion of a public improvement or services project (the "Authorized Improvements") undertaken for the benefit of the property within \_\_\_\_\_ (the "District") created under \_\_\_\_\_ (insert Subchapter A, Chapter 372, Local Government Code, or Chapter 382, Local Government Code, as applicable).

**AN ASSESSMENT HAS BEEN LEVIED AGAINST YOUR PROPERTY FOR THE AUTHORIZED IMPROVEMENTS, WHICH MAY BE PAID IN FULL AT ANY TIME. IF THE ASSESSMENT IS NOT PAID IN FULL, IT WILL BE DUE AND PAYABLE IN ANNUAL INSTALLMENTS THAT WILL VARY FROM YEAR TO YEAR DEPENDING ON THE AMOUNT OF INTEREST PAID, COLLECTION COSTS, ADMINISTRATIVE COSTS, AND DELINQUENCY COSTS.**

The exact amount of the assessment may be obtained from \_\_\_\_\_ (insert name of municipality or county, as applicable). The exact amount of each annual installment will be approved each year by \_\_\_\_\_ (insert name of city council or county commissioners court, as applicable) in the annual service plan update for the district. More information about the assessments, including the amounts and due dates, may be obtained from \_\_\_\_\_ (insert name of municipality or county, as applicable).

Your failure to pay any assessment or any annual installment may result in penalties and interest being added to what you owe or in a lien on and the foreclosure of your property.

\_\_\_\_\_  
Signature of Seller

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Seller

\_\_\_\_\_  
Date

The undersigned purchaser acknowledges receipt of this notice before the effective date of a binding contract for the purchase of the real property at the address described above.

\_\_\_\_\_  
Signature of Buyer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Buyer

\_\_\_\_\_  
Date



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## APPENDIX

# B

## DEPARTMENT OF JUSTICE, OFFICE OF PUBLIC AFFAIRS PRESS RELEASE

DOJ FILES LAWSUIT AGAINST NAR FOR ANTICOMPETITIVE RULES

FOR IMMEDIATE RELEASE

Thursday, November 19, 2020

### **Justice Department Files Antitrust Case and Simultaneous Settlement Requiring National Association of Realtors® To Repeal and Modify Certain Anticompetitive Rules**

#### **Settlement Will Increase Competition to the Benefit of American Homeowners and Homebuyers and Allow for Innovation in Brokerage Markets**

The Department of Justice today filed a civil lawsuit against the National Association of REALTORS® (NAR) alleging that NAR established and enforced illegal restraints on the ways that REALTORS® compete.

The Antitrust Division simultaneously filed a proposed settlement that requires NAR to repeal and modify its rules to provide greater transparency to home buyers about the commissions of brokers representing home buyers (buyer brokers), cease misrepresenting that buyer broker services are free, eliminate rules that prohibit filtering multiple listing services (MLS) listings based on the level of buyer broker commissions, and change its rules and policy which limit access to lockboxes to only NAR-affiliated real estate brokers. If approved, the settlement will enhance competition in the real estate market, resulting in more choice and better service for consumers.

“Buying a home is one of life’s biggest and most important financial decisions,” said Assistant Attorney General Makan Delrahim of the Justice Department’s Antitrust Division. “Home buyers and sellers should be aware of all the broker fees they are paying. Today’s settlement prevents traditional brokers from impeding competition — including by internet-based methods of home buying and selling — by providing greater transparency to consumers about broker fees. This will increase price competition among brokers and lead to better quality of services for American home buyers and sellers.”

According to the complaint, NAR’s anticompetitive rules, policies, and practices include: (i) prohibiting MLSs that are affiliated with NAR from disclosing to prospective buyers the commission that the buyer

broker will earn; (ii) allowing buyer brokers to misrepresent to buyers that a buyer broker’s services are free; (iii) enabling buyer brokers to filter MLS listings based on the level of buyer broker commissions offered; and (iv) limiting access to the lockboxes that provide licensed brokers with access to homes for sale to brokers who work for a NAR-affiliated MLS. These NAR rules, policies, practices have been widely adopted by NAR-affiliated MLSs resulting in decreased competition among real estate brokers.

NAR is a trade association of more than 1.4 million-member REALTORS® who are engaged in residential real estate brokerages across the United States. NAR has over 1,400 local associations (called “Member Boards”) organized as MLSs through which REALTORS® share information about homes for sale in their communities. Among other activities, NAR establishes and enforces rules, policies, and practices that are adopted by the Member Boards and their affiliated MLSs.

The proposed settlement will be published in the Federal Register as required by the Antitrust Procedures and Penalties Act. Any person may submit written comments regarding the proposed final judgment within 60 days of its publications to Chief, Office of Decree Enforcement and Compliance, Antitrust Division, U.S. Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC 20530. At the conclusion of the 60-day comment period, the court may enter the proposed final judgment upon a finding that it serves the public interest.

<https://www.justice.gov/opa/pr/justice-department-files-antitrust-case-and-simultaneous-settlement-requiring-national>



# Legal Update

Part II  
Edition 10.0



# Legal Update

## Part II

### Edition 10.0

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## CHAPTER

# 01

# AGENCY – FIDUCIARY DUTIES AND ETHICAL BEHAVIOR OF LICENSE HOLDERS

## Learning Objectives

After this chapter, you will be able to

- Identify and define each of the three canons listed in The Canons of Professional Ethics and Conduct.
- Provide one example of an act of omission in a real estate transaction.
- List three ways a license holder can develop geographical competency.
- Discuss license holder best practices for assisting clients with the Seller's Disclosure Notice.
- Role play multiple offer scenarios and license holder best practices.
- Understand proper use of copyrighted surveys.



## The Canons of Professional Ethics and Conduct

Since January 1, 1976, real estate license holders in Texas have been required to adhere to fundamental guidelines in professional ethics and conduct set out in Chapter 531 of TREC rules, The Canons of Professional Ethics and Conduct. The three basic canons are:

- ✓ Fidelity,
- ✓ Integrity, and
- ✓ Competency.

### §531.1 - Fidelity

Fidelity is the first article of the Canons of Professional Ethics and Conduct found in TREC rule §531.1 and states:

“A real estate broker or salesperson, while acting as an agent for another, is a fiduciary. Special obligations are imposed when such fiduciary relationships are created. They demand:

1. that the primary duty of the real estate agent is to represent the interests of the agent's client, and the agent's position, in this respect, should be clear to all parties concerned in a real estate transaction; that, however, the agent, in performing duties to the client, shall treat other parties to a transaction fairly;
2. that the real estate agent be faithful and observant to trust placed in the agent, and be **scrupulous and meticulous** in performing the agent's functions; and
3. that the real estate agent place no personal interest above that of the agent's client.”

## The Fiduciary Relationship

A fiduciary relationship is based on trust and confidence. The beneficiary, or in our case, the principal or client, trusts their agent will act in a manner that will prioritize their interests.

The principal should be able to trust their agent to act with care, and loyalty coupled with reasonable and impartial judgment. The fiduciary duty requires the agent to put aside any selfish or personal interest when working on behalf of the client. Please note however, that the agent must also treat all other parties in a transaction fairly.

“Scrupulously” is defined as acting in strict regard for what is considered right or proper. A scrupulous agent tells the truth and follows the law. A scrupulous agent, even while not representing a party to a transaction, will still provide material information to that person, disclose representation and disclose commission agreements.

“Meticulously” is defined as marked by extreme caution or excessive care in the consideration or treatment of details; careful. An agent, in order to be meticulous will chart a timeline of the transaction, noting contingency dates and other contract details. A meticulous agent will keep careful notes regarding the transaction and keep all transaction documents orderly, creating a work file that includes all communications.

### DISCUSSION

1. What does fairly mean?
2. Give examples of fair versus unfair treatment.

Putting fidelity into practice requires the agent to understand the goals and interests of the principal and work diligently towards meeting those goals.

## Case Study 1

Agent Andrew represents a buyer. Agent Andrew presents an offer on behalf of his buyer to Agent Mabel, who represents the seller. The offer is considerably lower than the list price and lower than the price range Agent Mabel presented to her client based on her comparative market analysis. Additionally, the offer requests Agent Mabel's seller pay the majority of the closing costs associated with the transaction.

### DISCUSSION

What options and information should Mabel provide to meet the duty of working in the best interest of her client?

## Case Study 2

Agent Yuan shows a home to his buyer client, Wendy. Wendy falls in love with the home and instructs Yuan to present an offer to the seller. Yuan knows of another similar home nearby that likely meets Wendy's criteria, as well. As requested by Wendy, Agent Yuan presents the offer to the seller's agent without informing Wendy of the other home.

### DISCUSSION

Is there any concern that Agent Yuan violated his fiduciary responsibility? Should Agent Yuan have done something differently?

## §531.2 Integrity

What is Integrity? Integrity, according to Black's Law Dictionary is defined as:

... prescribing the qualifications of public officers, trustees, etc.: this term means soundness of moral principle and character, as shown by one person dealing with others in the making and performance of contracts, and fidelity and honesty in the discharge of trusts; it is synonymous with “probity,” “honesty,” and “uprightness.” (<https://thelawdictionary.org/integrity/>)

Notice the word “trustees” in this definition. License holders, due to fiduciary responsibilities, are similar to trustees for their clients' interests. A real estate license holder in Texas must demonstrate and practice soundness of moral principle and character.

The Canons of Professional Ethics and Conduct require fidelity and fairness in the discharge of the duty of trust to clients. Section 531.2 of TREC rules (Canons) explains integrity as it relates to real estate as follows:

“A real estate broker or salesperson has a special obligation to exercise integrity in the discharge of the license holder's responsibilities, including employment of prudence and caution so as to avoid misrepresentation, in any wise, by acts of commission or omission.”

The obligation of real estate license holders to exercise integrity is above and beyond what an ordinary person would be required to do in a similar situation. Prudence requires acting wisely and with caution when providing advice to clients, and when representing the characteristics of a property for sale or lease. Misrepresentation destroys the trust and confidence license holders owe to clients and the public.



## Acts of Commission and Omission

Integrity also requires prudence and caution in both the acts of commission and omission. Committing an accidental error while engaging in brokerage services may be less egregious than omitting a step or action that is required. However, it may be equally impactful to the transaction. An agent's training and experience should help to ensure against accidental errors in the commission of acts such as forgetting to advise a client to obtain a copy of a survey or an owner's title insurance policy. Omissions may be those acts that are not obvious without a clear understanding of the unique features of a property and the client's intended uses.

An agent who represents a client in the purchase of a farm and ranch property, who fails to advise (omission) the client to seek help in determining if fresh water is available on the property could have violated the Canons, or be considered negligent.

**Note: Promulgated contract forms in Texas have the same phrase in common.**

***“Consult an Attorney”***

### Case Study 3

An agent represents a buyer and the buyer selects a property advertised as being located on a “greenbelt.” The property is priced higher than neighboring properties because it backs to a greenbelt. What are some omissions that could be made by the buyer's agent and consequently impact the client and the transaction?

#### Possible Omissions:

1. Not advising the client to hire an attorney, civil engineer or other competent professional to be sure the “greenbelt” is actually recorded as a part of the subdivision plat.
2. Not asking the listing agent to provide the greenbelt documentation prior to drafting a contract offer.
3. Not advising the client to exercise caution as properties advertised as being located on a “greenbelt” might only appear to be.
4. Not asking the local government entity that processes the development plans for permits if any permits are pending for development of the “greenbelt”.
5. Not advising the client to consult with the local government entity that processes the development plans for permits if any permits are ending for development of the “greenbelt.”

If the buyer's agent omits any or all of these actions, the agent may have not exercised prudence and caution.

## §531.3 - Competency

### Geographic Competency

While competency has been included as a requirement of the Canons of Professional Ethics and Conduct [TREC rule §531.3] since its inception in 1976, in recent years TREC and the Texas Legislature have made it more clear in the law that license holders must be competent in the market area in which they are providing brokerage services. Each local real estate market can have its own unique characteristics. Markets vary widely across such broad and diverse states as Texas.

In December of 2018, TREC amended the broker responsibility rule to require brokers ensure sponsored agents are geographically competent in the market being served. The rule was also amended to require coaching when a license holder performs brokerage services in a particular market for the first time. [§535.2(i)]

In September of 2019, both TREC and the Texas Legislature added clarification in regard to competency. TREC amended rule §531.3 to more clearly define geographic and subject matter competency. The rule now reads:

It is the obligation of a license holder to be knowledgeable and competent as a real estate brokerage practitioner. The license holder must:

1. be informed on local market issues and conditions affecting real estate in the geographic area where a license holder provides services to a client;
2. be informed on national, state, and local issues and developments in the real estate industry;
3. exercise judgment and skill in the performance of brokerage activities; and,
4. be educated in the characteristics involved in the specific type of real estate being brokered for others.

In Senate Bill 624, the 86th Legislature amended Chapter 1101 of the Texas Occupations Code to eliminate the Texas residency requirement for real estate license holders. However, they also added a requirement for all license holders to be geographically competent. It reads as follows:

- The commission may suspend or revoke a license issued under this chapter or Chapter 1102 or take other disciplinary action authorized by this chapter or Chapter 1102 if the license holder: ...
- (6) fails to consider market conditions for the specific geographic area in which the license holder is providing a service;...

## How does a license holder become geographically competent?

A license holder must keep in mind at all times that real estate is by its very nature a ***three-dimensional*** service. This means an agent must not only walk the property itself from one end to the other and from corner to corner, but also realize that aerial photographs and internet maps will not provide the “boots-on-the-ground” observations needed to competently advise a client and gain a geographically competent understanding of the market area.

An agent must also clearly identify the specific type of real estate being brokered. While there may seem an obvious distinction between the two most basic types of real estate brokerage, residential and commercial, there are many variations and nuances. For example, an agent who has only performed brokerage services for single-family residential properties, needs training and education before representing a tenant in leased office space. Characteristics of office leasing will be totally foreign to a residential-only agent and may include net rentable square footage vs. useable square footage, common area maintenance fees, build-out allowances, parking fees and allowances, negotiation of waiver of landlord’s liens, the right of the tenant to audit common area maintenance fees annually, and even the language of future estoppel letters. The way in which square footage is defined can vary significantly from space to space and property to property. Retail leasing is equally as complicated. Another complex and challenging area of real estate service is farm and ranch brokerage.

## Enforcement Spotlight – Geographic Competency

**Facts** – License holder, Alejandra listed a property located on a state highway. After closing, the Buyers learned that the Texas Department of Transportation (TxDOT) was planning to expand the state highway, doubling it in size, and requiring land from private property owners through eminent domain. Public hearings for the TxDOT expansion began three years before the home was sold. Alejandra said she didn’t know about the project.

**Result** - Alejandra was found in violation of Section 1101.652(a)(6) of TRELA, failing to consider market conditions for the specific geographic area. Alejandra was ordered to take education and pay an administrative penalty. (Agreed Order)

### **Consider this...**

*License holder Alejandra was found geographically incompetent. What are some actions Alejandra could have taken to increase her knowledge about the property she sold?*

### **Answer:**

She could have consulted with her broker and/or other agents regarding any pending property changes in the area of the property. A change as substantial as expanding a highway is newsworthy and the broker and other agents may have been aware of it. She also could have performed a city search of the Texas Comptroller’s Online Eminent Domain Database (COEDD).

## Building Geographic Competency

An agent can gain competency by obtaining coaching or mentoring from a sponsoring broker or seasoned agent in their office. There is no substitute for personal, professional experience to gain an understanding of unique characteristics in any particular market.

Below are some other practical suggestions to increase geographic competency:

1. **Search the MLS data available for the property.** Some license holders may have access to the MLS, which is a valuable resource for residential property. The MLS allows a license holder to run comparative market analysis in specific areas, comparing home size, age, improvements, etc... However, generally speaking, most commercial spaces, retail

spaces, new homes, and farm and ranch properties are not listed in MLS systems.

2. **Visit the county appraisal district website.**

Texas is home to 254 counties of which there are 253 county appraisal districts. Almost all have public websites offering information such as:

- \* current valuation and valuation changes over time;
- \* size of land and improvements with details on shape and structure of the improvements;
- \* up to the last three deed transactions, maps with shapes of the tract, dimensions, and sometimes subdivision plats;
- \* tax rates of the various taxing jurisdictions;
- \* exempt statuses; and
- \* information on neighboring properties.

A competent agent will always review information publicly available from the appraisal districts. Interviewing appraisers that work in a district can be very informative. The business culture of local areas of Texas are highly variable and these differences are reflected in the official publications of local governmental entities.

3. **Become familiar with real property records in the county.**

Not only are land deeds filed and available to the public, but mineral leases, mineral and water deeds, and subdivision plats are also recorded. Research into real property records at the county level has been and always will be a significant resource for license holders. Hurricane Harvey and the impact on the Cinco Ranch subdivision is one example of where information about the original plat filed and the section of the subdivision subject to inundation by the US Army Corps of Engineers would have been important to know.

4. **Talk to the title companies in the area for suggestions of professional consultants such as surveyors, attorneys, architects, civil and structural engineers, geotechnical engineers, and others.**

Consult with appropriate professionals to discover impactful market information, geographical information, soil conditions, floodplain and flood issues, planning and zoning requirements, and a myriad of other information that may be unique to the local market. If you are able to gain access from neighbors or selling clients, review old title commitments and title policies for relevant information that not only applies to the tract in question but the local marketplace as well.

5. **Talk to other brokers and agents who work in a specific area.**

Ask about the current conditions in the local market. Find out if there are continuing education courses offered in the area that include information about current local conditions in the real estate industry.

6. **If the property is located in farm and ranch country, talk to the Agri-Life Extension Agent and the Farm Services Agency representatives (FSA).**

The Agri-Life Extension Agent, commonly known as the County Agent, knows the area well and as part of the Texas A & M University System, has local expertise that is invaluable. The local FSA office has old aerial photographs of area properties sometimes as far back as the 1940s. The FSA office staff will also be able to tell you if the property qualifies for any government subsidies. Stop in and visit with the local farm implement dealers such as John Deere or Kubota, the feed and seed supply stores, the local lumber yards and hardware stores, and certainly in today's volatile energy exploration markets, talk to the area's oil and gas landmen.

7. **If any property is in a groundwater conservation district (GCD), which includes municipal areas as well as rural areas in some parts of the state, talk to the GCD general manager and staff to discuss the groundwater regulations and exemptions on the property and the area as a whole.**

A visit to the Texas Water Development Board website and the Texas Commission on Environmental Quality (TCEQ) website provides maps of the state in which a local GCD has jurisdiction over area groundwater. Almost all GCDs now have websites that include contact information, rules and by-laws accessible to the public. If the property is located on a watercourse – creek, river, or stream – check at the TCEQ site to determine if the property has any water rights for irrigation or industrial use. Talk to the local water well drillers about water quantity and quality. Talk to the local electrical power company about easements, issues in metering, and future plans for expansion.

8. **Conduct an old fashioned “market study” by creating a map of neighboring tracts individually numbered with corresponding notes for each tract.**

In this way, a competent agent builds a visual database of the market. While this practice is more difficult without MLS support, modern tools such as smart phones with cameras and internet map tools have

allowed for an abundance of data regarding different real estate markets unavailable even a few decades ago.

A few days on the ground in a particular market may allow a competent agent to build a profile of valuable information for a client. In today's modern world of text messages and emails, in person interviews have regained popularity for agents who want to gain competency in the characteristics of a specific type of real estate.

Article 11 of the National Association of REALTORS® Code of Ethics directly relates to the competency necessary for the specific type of real estate a member engages in. See Appendix A for an article that addresses this topic in more detail.

## DISCUSSION

Sales Agent Sandra is sponsored by Broker Miguel and lives and works in a small town outside of Houston. Sandra has heard about the large commissions other sales agents are receiving for representing commercial leasing clients in downtown Houston. Sandra has been a successful sales agent for 10 years, practicing in single-family residential resales. Sandra has never executed an office lease, represented a tenant in their search for office space, and never taken a course in commercial real estate.

1. How does Broker Miguel assess Sandra's competency (subject matter and geographic in commercial leasing)?
2. How can Sales Agent Sandra gain competency in commercial leasing?

## Kahoot! Quiz

Earlier in the Chapter, we discussed the 3 Canons of Professional Ethics and Conduct—Fidelity, Integrity, and Competency. Let's test your skills at identifying which action (or lack of action) falls under the appropriate canon:

1. Failing to advise the client to seek the counsel of an attorney regarding operating in-home surveillance during an open house.
2. Having and sharing knowledge about the school districts in which an agent is showing homes.
3. Treating all parties fairly in a real estate transaction.
4. Taking a course from the Texas A&M Real Estate Research Center about current real estate industry trends.

5. Saying what you will do, doing it, and following up with your client when you say you will.
6. Manage the real estate transaction for your client by maintaining a checklist of the details of transaction including due dates and communications records.

## Intermediary

Intermediary status was created in 1996. A broker who represents the seller and the buyer in the same transaction must act as an intermediary. Properly establishing an intermediary relationship can be accomplished in a few steps. See Appendix C for detailed information outlining the steps that must be taken to correctly establish an intermediary relationship.

## Multiple Offers

TRELA 1101.557 requires all offers received be presented to the seller. In hot markets, multiple offers are more common. Handling multiple offers and the communication between license holders representing the sellers and buyers can be very delicate and challenging. At all times, the seller's agent must remember their fiduciary duty to their client as well as their obligation to treat the other side(s) fairly and honestly [TREC rules §531 and §535.156]. Timelines for communication are also established by rule [TREC rule §535.2]. Brokers should have policies and training available for agents in multiple offer situations.



## Multiple Offers Scenario

**Viola is a very experienced sales agent. She has a new listing that will hit the market soon. The market is very hot and Viola expects the seller to receive multiple offers. She is preparing a training for two new sales agents (Sunil and Jenny) that have recently joined her office.**

*Viola: Good morning Sunil and Jenny, I am so happy you are joining me for this round table discussion on multiple offers! I'll use my upcoming listing as an example.*

*When I was on the listing appointment last night with the seller, I reviewed the marketing plan and comparable data to establish a sales price. I also discussed the possibility of multiple offers. I explained to the seller that in multiple offer situations, we can either share the details of each offer with all buyer's agents or simply inform them that this is a multiple offer situation without any details. I told the seller it was their choice.*

*Sunil: What did she say? I bet she said, "Tell them all."*

*Jenny: Wow, Sunil I would have guessed she would say, "Don't tell anyone."*

*Viola: The client asked, which was the better way to go. I told her that sometimes when a seller's agent tells the buyer's agents there are multiple offers, a bidding war is created. Buyers' agents and their buyers are curious about the details of other competing offers but disclosing those details can be problematic.*

*Jenny: What's the problem with sharing details?*

*Viola: Because if you tell one buyer's agent you must tell them all. It can be a nightmare to keep up with, so our broker recommends to inform all buyer's agents of the multiple offer situation, without sharing details.*

*Sunil: I cannot stand it...what did she decide?*

*Viola: She decided to tell every agent who has an interested buyer that we have multiple offers, without disclosing the details.*

*Jenny: This is very interesting, Viola, Is there anything else we need to know about multiple offers?*

*Viola: Well, the next thing I talked about with the seller is "love letters." You know, those letters that buyers write about how their children will love the playground down the street and this backyard is perfect for "Yippie" the dog?*

*Sunil: What's wrong with those? When we bought our house, we wrote one and the seller picked our offer!*

*Viola: Some sellers have based decisions on information contained in these letters that may have fair housing implications. Agents and sellers need to avoid EVEN the slightest hint of acting in violation of fair housing laws. In another class we can watch some videos and have some dialogue about that. The seller understood and decided not to be a part of that at all!! She instructed me to return the letters to the buyer's agent unopened.*

*Jenny: There is so much to learn and remember!*

*Viola: Yes there is and we have yet to cover it all!!*

## DISCUSSION

1. What is a best practice on the presentation of multiple offers?
2. Does a license holder really have to present ALL offers?
3. Is it true that a license holder can stop presenting offers after the seller has accepted an offer and a contract has been executed?
4. What do I do if an offer proposes some terms or conditions that I believe to be unethical or violate TREC rules?
5. How can license holders let other agents know that the seller will not accept any "love letters?"

## Best Practices For Selection and Use of a Seller's Disclosure Notice

License holder should follow their broker's policy on seller disclosure(s) notices. Absent guidance from the broker, the license holder should provide the seller disclosure forms available in the market. The seller can choose which form they will use. If a form is used that requires additional forms or documents to be attached, be sure to attach them in an effort to fully and honestly inform potential buyers of the property condition.

### Aflalo v. Harris – A Civil Case in Dallas County Update

You may remember learning about Aflalo v. Harris, a case involving issues with the seller's disclosure notice and subsequent documentation in the last edition of Legal Update. See Appendix E for an update of the proceedings between the two parties.

## Broker's Price Opinion (BPO)

It is common practice for a license holder to prepare a broker price opinion (BPO), or a comparative market analysis (CMA) for their clients. In fact, under TREC rule 535.16(c), a license holder is obligated to provide a BPO or CMA when negotiating a listing or offering to purchase the property for the license holder's own account. This practice should be consistent for every client.

Prior to foreclosure, banks may request a BPO on a property before hiring an appraiser. Attorneys may request a BPO in situations where litigation is involved, and the price of property may be a factor. Property owners considering protesting taxes may ask a license holder to prepare a BPO or CMA. Additionally, those in the early stages of a potential condemnation or eminent domain proceeding may seek this information. For Q&As on Broker Price Opinions, see Appendix F.

## Copyrighted Surveys

Have you looked closely at surveys lately? If you have, you have likely seen a copyright symbol. This is the symbol declaring this document the original work of the surveyor, whose stamp is also on the document. There has been some legal debate as to whether a survey is copyrightable.

What does this mean for license holders? Encourage clients to review the fine print on the survey for restrictions on reuse or a copyright symbol. If either

is present, instruct the client to contact the surveyor regarding use in a subsequent transaction. If allowed, be sure the client gets that permission in writing.

### Can a copyrighted survey be shared without the written permission of the surveyor?

Probably not under copyright law. If the copyright is upheld, whoever published the survey could be subject to copyright infringement action and damages. This could come into play if a license holder uploads the survey to the MLS. However, it could be argued that sellers are basically sharing the survey they purchased with the buyer and not publishing it in violation of copyright law. This is not unlike someone buying a copyrighted book and giving it to a friend to read. Without any court cases, it is still a gray area.

### Does this mean the seller who purchased the survey can share it with their buyer?

The client needs to look at their agreement with the surveyor or on the survey itself to see what rights the client was given when the survey was originally purchased. Did it include the right to show it to a future buyer or a title company upon the sale of the property?

### How does the seller obtain permission to share a copyrighted survey?

Contact the surveyor and ask! Always get permission in writing!

### Does this mean that a previous buyer can share the survey with a subsequent buyer in a few years?

Probably not, because the buyer did not purchase the original survey and would have no contractual rights of use. From a practical standpoint, after a number of years, the next buyer or lender will probably want a new survey.

### What liability is created for the broker by the license holder who recommends sharing a copyrighted survey?

The broker could be included in the copyright lawsuit or sued independently by the seller after they lose a copyright infringement suit. Either way this means attorney costs and possible damages to be paid by the broker.

### What liability is created for the seller by the license holder who recommends sharing a copyrighted survey?

They could be sued for copyright infringement and incur attorney fees, court costs and possibly be liable for damages.

# CHAPTER 02

## WATER AND MINERAL RIGHTS

### Learning Objectives

After this chapter, you will be able to

- Identify the three types of water sources in Texas and which government entities regulate each.
- Understand the obligations and duties license holders owe clients and customers regarding water rights.
- Be aware of water right situations that require reporting on the seller's disclosure notice.
- Understand how real estate transactions involving mineral rights should be handled, including the use of the correct TREC promulgated form.
- Describe the role of title insurance where mineral rights are a factor.



### Introduction

Most Texans' understanding of water rights goes only as far as their monthly water bill. Most believe that as long as the faucet turns and water flows, their water "right" is limited only by their ability to pay.

However, Texas has often been plagued with long droughts. The Texas Water Development Board's (TWDB) State Water Plan for 2012 asked: Do we have enough water for the future?" Their startling and unequivocal answer was:

*"We do not have enough existing water supplies today to meet the demand for water during times of drought. In the event of severe drought conditions,*

*the state would face an immediate need for additional water supplies of 3.6 million acre-feet per year with 86 percent of that need in irrigation and about 9 percent associated directly with municipal water users. Total needs are projected to increase by 130 percent between 2010 and 2060 to 8.3 million acre-feet per year. In 2060, irrigation represents 45 percent of the total and municipal users account for 41 percent of needs."*

The shortages of water Texans are predicted to face in our future, coupled with the obvious impact water has on our everyday lives, including water's impact on real property values, means real estate license holders and consumers must be better educated about water rights in Texas.



Assessing the water characteristics of any particular property presents unique challenges to buyers, sellers, lessors, lessees, and real estate agents. The water scarcity predicted in our future requires potential buyers to consider a variety of less often considered assessment criteria. The potential of future water scarcity requires sellers and their real estate agents to exercise extreme caution and prudence in their duties of disclosure regarding the water situation of any property being offered for sale.

Real estate license holders in Texas must keep one very important thought in mind when considering water rights – advise your clients to **consult an attorney** while making their decision to purchase a property or making representations about water rights when selling a property.

### Three Types of Water Sources and Their Owners

Water in Texas varies between the water flowing on the surface and the water flowing underground. The regulation of water is actually conducted by multiple government agencies.

There are three basic types of water sources this chapter discusses: **surface water, diffused surface water, and groundwater.**

**Surface Water** is water that flows on the surface of the ground in a watercourse. According to Title 30, Texas Administrative Code (30 TAC) §291.7(61) a “watercourse” is defined as “a definite channel of a stream in which water flows within a defined bed and banks, originating from a definite source or sources. (The water may flow continuously or intermittently, and if the latter, with some degree of regularity, depending on the characteristics of the sources.)”

[http://txrules.elaws.us/rule/title30\\_chapter297\\_sec.297.1#:~:text=\(61\)%20Watercourse%2D%2DA%20definite,a%20definite%20source%20or%20sources](http://txrules.elaws.us/rule/title30_chapter297_sec.297.1#:~:text=(61)%20Watercourse%2D%2DA%20definite,a%20definite%20source%20or%20sources).

The courts have described watercourses as having:

- (1) a defined bed and banks;
- (2) a current of water; and
- (3) a permanent supply source of water.

Who owns the rights to surface water like lakes, streams, or creeks? The State of Texas owns the water in a watercourse, held in trust for the citizens of the state. The Texas Commission on Environmental Quality (TCEQ) regulates the use of surface water in Texas by a system of water rights. Texas follows the legal concept of and allocates surface water rights and permits based on “first in time is first in right.” The TCEQ, through its

authority in allocating water rights, oversees 17 state-wide river authorities and 4 watermasters.

**Diffused surface water** can be described as rainwater that runs off your roof or over the surface of your land without flowing in a stream or channel. This type of water is owned by the landowner and is subject to very limited or no regulation.

**Groundwater** is water held underground in aquifers and pools. Ownership of groundwater in Texas was debated for many decades, but in the fall of 2011 the debate about ownership of groundwater ended. The Texas Legislature passed a bill, SB 332, which states “The legislature recognizes that a landowner owns the groundwater below the surface of the landowner’s land as real property.”

However, groundwater is regulated by 101 groundwater conservation districts (GCDs) with 101 different sets of rules and regulations within the parameters of Chapter 36 of the Texas Water Code. Note that not all of Texas groundwater is covered under the jurisdiction of a GCD, either. Many citizens in these jurisdictions are unaware of these regulatory agencies.

Now that you are familiar with the three types of water sources in Texas, let’s dive deeper into how surface water and groundwater is regulated in our state (and yes, that pun was intended).

### Surface Water Regulators and Regulations

The “buck-stops-here” surface water regulator in Texas is the TCEQ. Generally, a permit is required from TCEQ in order to use surface water for any purpose outside of domestic and livestock use, emergency use by fire departments, and other similar public services.

The TCEQ website offers a very large Excel spreadsheet of all the surface water rights holders in the state and can be found at [https://www.tceq.texas.gov/permitting/water\\_rights/wr-permitting/wrwud](https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/wrwud).

License holders should advise clients to seek the help of attorneys familiar with surface water rights and permitting in Texas and/or to seek the assistance of licensed engineers or hydrologists. Unfortunately, some older, and even more recent, surface water deeds are not filed or recorded in the county’s real property records. Title insurers have been very reluctant to offer any insurance coverage on the water rights associated with a property.

An example of the public’s lack of knowledge about surface water regulations is evidenced in a common question about lake water use. Often this question comes from Lake Travis property owners or potential purchasers of land there: “May I pump water from the

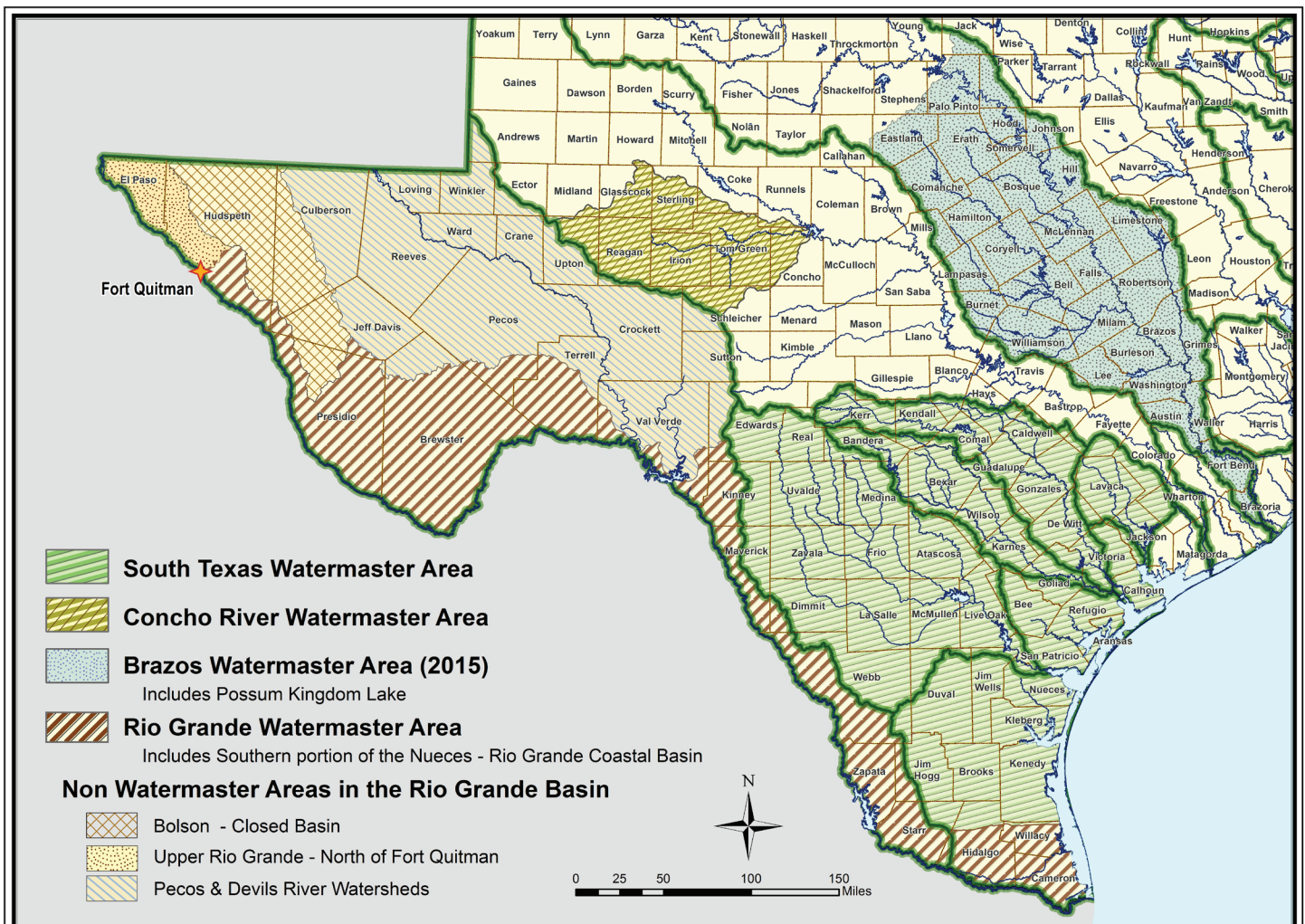


lake to my home since I am adjacent to the water?" The answer is "No. You must obtain a permit from the Lower Colorado River Authority (LCRA) to do so." Without a permit, the homeowner may incur fines for the violation of unpermitted water use on a state-owned lake. Note that none of the seller's disclosure notices or promulgated contract or forms mention the TCEQ's authority over the use of surface water or the river authorities' jurisdiction within their boundaries.

## Watermasters

There is another level of surface water regulation that even fewer Texans understand - the jurisdiction and duties of our four state **watermasters**. The role of the watermaster is one of the oldest regulatory activities concerning surface water in Texas.

Similar to getting a permit from the TCEQ for using surface water, before diverting a water source regulated by a watermaster, the water right holder must notify the watermaster of the intent to divert at a specific time and the specific amount of water to be diverted. If the water is available and the water right holder will not exceed its annual authorized appropriation of water, the watermaster then authorizes the diversion and records this against the right. The watermaster program includes staff "deputies" who perform regular field inspections of authorized diversions to insure compliance with the water right.



# Texas Watermaster Areas

[https://www.tceq.texas.gov/permitting/water\\_rights/wmaster](https://www.tceq.texas.gov/permitting/water_rights/wmaster)

# Groundwater Regulators and Regulations

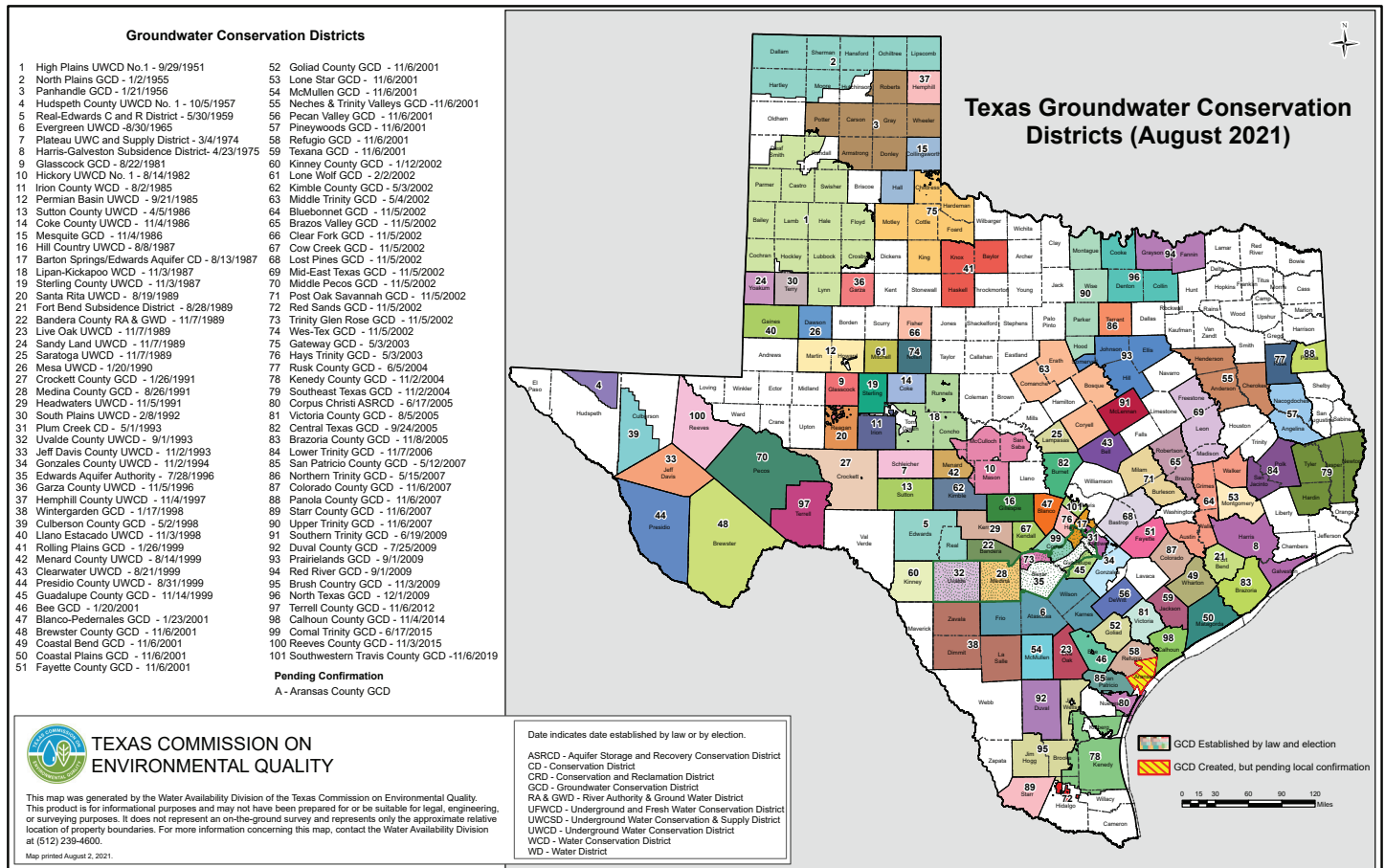
How is water from aquifers and underground pools that feed springs and wells regulated? Groundwater is regulated through groundwater conservation districts (GCDs). Today there are 101 GCDs in Texas covering a large portion of the state, but not all of the state. Each GCD has its own set of rules and regulations, its own definition of terms such as “domestic and livestock uses,” and its own permitting requirements in accordance with the Texas Water Code. Most of the districts have boundaries set by county lines, even though the water doesn’t stop flowing at county lines.

Many consumers in Texas may not realize that GCD’s even exist until a property owner wants to drill a well on their property or apply for an irrigation permit that would require drilling into the ground to access the groundwater.

Below is a map showing the existing Texas Groundwater Conservation Districts. It can be found at <https://www.tceq.texas.gov/assets/public/permitting/watersupply/groundwater/maps/gcdmap.pdf>

License holders can assist their clients by referring them to the TCEQ map site above to determine if a property lies in the jurisdiction of a GCD. **Remember that a license holder, unless they hold a license to practice law in Texas or hold an engineering license, may not attempt to interpret the by-laws and rules of any individual GCD on behalf of a client.**

What can happen if a seller fails to disclose to a potential buyer that the property lies within the jurisdiction of a GCD? The Buyer could find themselves the victim of misrepresentation by the Seller and/or the Seller’s agent. For example, property in the Barton Springs Edwards Aquifer Groundwater Conservation District (BSEAGCD), domestic and livestock wells are exempt from needing a permit to drill for groundwater. However, if a water provider delivers water to the property line and the owner of the property ties in and uses the water for domestic and livestock use, then their original permit exemption for a water well now needs a permit. If the Seller and the Seller’s agent advertise that the property has two water sources (the well and the public water line), they may be guilty of misrepresenting the water sources. Few (if any) Sellers or Seller’s agents are aware of this rule in the BSEAGCD, yet they should be if they want to avoid misrepresentation and a possible lawsuit.



## Water and the Seller's Disclosure Notice

For over two decades, any defect actually known to the seller of a single-family home must be disclosed on a seller's disclosure notice, including defects not covered on the form. The prudent Seller, Buyer and Agent should keep in mind the source and availability of water to any property. Any known defects about the property's water rights must be fully and truthfully disclosed.

TREC's Seller's Disclosure Notice is the minimum required by law and mirrors the provision in the Texas Property Code. It contains the opportunity to disclose information about the property's water and water rights in these areas:

3. Location of the subject property within a GCD or district.

The Seller's Disclosure Notice does not have a place to disclose specific information about surface water rights at this time. **A license holder should advise their client to consult an attorney and/or an engineer about the surface water rights to a property containing a watercourse.**

There is also no promulgated form that a license holder may use if the seller wants to reserve all or a portion of a property's water rights at this time. **A license holder should advise their client to consult an attorney.**

The next drought will inevitably bring with it a

1. The Property has the items checked below [Write Yes (Y), No (N), or Unknown (U)]:

Water Supply:    \_\_\_ City    \_\_\_ Well    \_\_\_ MUD    \_\_\_ Co-op

Are you (Seller) aware of any of the above items that are not in working condition, that have known defects, or that are in need of repair?  Yes    No    Unknown. If yes, then describe. (Attach additional sheets if necessary): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

9. Are you (Seller) aware of any of the following? Write Yes (Y) if you are aware, write No (N) if you are not aware.

\_\_\_ Any notices of violations of deed restrictions or governmental ordinances affecting the condition or use of the Property.

\_\_\_ Any rainwater harvesting system located on the property that is larger than 500 gallons and that uses a public water supply as an auxiliary water source.

\_\_\_ Any portion of the property that is located in a groundwater conservation district or a subsidence district.

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

## Water Right Issues That Require Reporting

Below are examples of water right issues that would require disclosure on a seller's disclosure notice:

1. A notice of violation of deed restrictions or governmental ordinances affecting the condition or use of the property, such as a non-permitted groundwater well;
2. A condition on the property which materially affects the physical health or safety of an individual, such as a water well that is located inside the minimum distance from a septic tank or field; and

greater awareness of the water rights or defects in the water rights of properties in Texas. Best practices for license holders concerning water rights include:

- \* Advise clients to consult an attorney to determine the water rights on a property.
- \* Assist clients by providing resources to help determine if the groundwater rights to the property are in the jurisdiction of a GCD.
- \* Assist clients by providing them links to the TCEQ's website for information about a property's surface water rights.
- \* Avoid interpretation of any laws, regulations,



geological data, or other information outside their duties as a license holder.

A dutiful and diligent license holder will become familiar with property water rights to gain geographic competency and avoid misrepresentation or acts of omission.

## Mineral Rights

Mineral rights are complicated and often confusing. Just determining the ownership and rights of any mineral holdings for any property in Texas can be highly controversial and strongly debated in courts of law. **Sellers may not know what mineral rights they own!** Additionally, developments in mineral extraction or discovery of new mineral resources in different parts of the state can cause a significant shift in the value of the mineral rights themselves seemingly overnight. It is also important for you and your client to understand that title insurance often does not cover mineral rights and may require your client to obtain additional coverage.

Because of this, license holders who are not attorneys or oil and gas experts such as petroleum landmen should never give advice to their clients on mineral rights. Minerals and mineral rights are a significant part of real property values in many parts of Texas.

**Advise your client to hire an attorney to assist when drafting contracts involving oil and gas mineral rights related to a real estate transaction.**

Mineral rights can be severed from the real property and sold. Once severed and sold, the mineral right owners can have rights to the use of the surface of the property in order to lease, extract, and use the minerals they own. In many parts of the state, it is common to discover that all or part of the mineral rights have been severed, and in some cases, for over a hundred years! Severed mineral rights are often split between multiple individuals who have never had contact with each other. Whether the license holder represents the buyer or seller of a property with minerals, the license holder should advise their client to **CONSULT AN ATTORNEY** in all matters involving mineral rights.





ADDENDUM FOR RESERVATION OF OIL, GAS, AND OTHER MINERALS



ADDENDUM TO CONTRACT CONCERNING THE PROPERTY AT

(Street Address and City)

NOTICE: For use ONLY if Seller reserves all or a portion of the Mineral Estate.

- A. "Mineral Estate" means all oil, gas, and other minerals in and under and that may be produced from the Property...
B. Subject to Section C below, the Mineral Estate owned by Seller, if any, will be conveyed unless reserved as follows (check one box only):
C. Seller does or does not reserve and retain implied rights of ingress and egress and of reasonable use of the Property...
D. If Seller does not reserve all of Seller's interest in the Mineral Estate, Seller shall, within 7 days after the Effective Date, provide Buyer with the contact information of any existing mineral lessee known to Seller.

IMPORTANT NOTICE: The Mineral Estate affects important rights, the full extent of which may be unknown to Seller. A full examination of the title to the Property completed by an attorney with expertise in this area is the only proper means for determining title to the Mineral Estate with certainty.

CONSULT AN ATTORNEY BEFORE SIGNING: TREC rules prohibit real estate licensees from giving legal advice. READ THIS FORM CAREFULLY.

Buyer

Seller

Buyer

Seller



The form of this addendum has been approved by the Texas Real Estate Commission for use with similarly approved or promulgated contract forms. Such approval relates to this contract form only. TREC forms are intended for use only by trained real estate license holders.



# CHAPTER 03

## AD VALOREM TAXES AND VALUATION

### Learning Objectives

After this chapter, you will be able to

- Understand ad valorem tax best practices and guidelines.
- Understand the license holder's role in assisting property owners protesting property taxes.
- Explain Paragraph 13 – Prorations and how rollback taxes function.
- Recall the tax exemptions allowed in Texas, and describe license holder best practices in advising a client seeking a tax exemption.



### Property Taxes On the Rise

License holders may be asked to assist clients in preparation for their client's property tax protest hearings at appraisal district offices.

***Geographically competent agents must understand the process of ad valorem taxation in Texas, but they must be equally careful not to venture into providing advice to their clients on how to minimize taxes or protest the valuations.*** License holders can assist their clients in preparation of competitive market analyses, broker price opinions, and other credible evidence of comparable property closed sales.

Ad valorem tax valuation lies in the jurisdiction of attorneys, appraisers and ad valorem property tax consultants.

### The Central Appraisal District System

Prior to the establishment of county-based central appraisal districts, each of the over 3,500 real property taxing entities in Texas valued real estate in their jurisdiction in their own manner.

There are 253 central appraisal districts in Texas based on county lines. While there are 254 counties in Texas, two counties share one district. The appraisal districts are charged with assessing the fair market value of each and every real property in their district, literally millions of tracts of land in Texas. Additionally, the districts assess the value of business personal property. The Texas Comptroller of Public Accounts oversees the entire ad valorem tax appraisal system. Ad valorem is a Latin term that means "according to value."

## Rate Proposals

Overlooked by many people in Texas who tend to only focus on the assessed values of their properties, is the proposed tax rates established by each of the government entities that have ad valorem taxation authority. Generally, in Texas, public school district (those up to the 12th grade) ad valorem taxes make up around 50% of the total annual property tax invoice. Property owners and geographically competent real estate license holders should be aware or even consider becoming active in the public hearings held by the taxing authorities presenting their annual ad valorem tax rates.

## Protesting Property Taxes

According to the Texas Comptroller of Public Accounts publication titled “Property Taxpayer Remedies,” the central appraisal districts:

“must send required notices by May 1, or by April 1 if your property is a residential homestead, **or as soon as practically possible** [emphasis added]. The notice must separate the appraised value of real and personal property. If the appraised value is increased, the notice must show an estimate of how much tax you would have to pay based on the same tax rate your city, county, school district, and any special purpose district set the previous year.”

If a property owner disagrees with the proposed appraised value they are encouraged to file a Notice of Protest with the Appraisal Review Board (ARB). The ARB is an independent, impartial group of citizens authorized to resolve disputes between taxpayers and the appraisal district. The Comptroller offers a form for use at <http://comptroller.texas.gov/forms/50-132.pdf>.

Many people in Texas have expressed frustration with the process of protesting ad valorem tax valuations. The appraisal districts are allowed local discretion in their interpretation and implementation of the Property Tax Code. Because ad valorem tax issues are so complex and varied, license holders who are not attorneys or ad valorem tax experts should steer clear of giving ad valorem tax advice to their clients.

This is yet another example of why geographic competency of license holders is essential. The appraisal districts have discretion in the valuation process that can be unique to their jurisdiction. A geographically competent license holder could assist their client in finding out the local appraisal district’s process, but should not interpret or offer advice about how to navigate the process. License holders should advise their clients to seek assistance of an appraiser, attorney, or ad valorem property tax expert.

According to the Comptroller, a property owner may protest the value of a property in the following situations:

- \* The value the appraisal district placed on the property is too high;
- \* The property is unequally appraised;
- \* The appraisal district denied a special appraisal, such as open-space land, or incorrectly denied your exemption application;
- \* The appraisal failed to provide the required notices; and,
- \* Other matters prescribed by Tax Code 41.41(a).

Listed below are ways a property owner can protest proposed valuation.

- \* A property owner can request an informal review with an appraisal district representative to gain an understanding of the reasoning behind the proposed valuation. This is also an opportunity to present arguments for an alternative opinion of value. The Comptroller suggests that a property owner file the Notice of Protest, even if the owner feels the dispute will be resolved informally. This preserves the owner’s right to protest.
- \* Upon finding no remedy in the informal review, the property owner has an opportunity to appear in a hearing with the representatives of the ARB. Representatives in counties with a population under 120,000 are appointed by local appraisal districts. Representatives in larger counties are appointed by the local administrative law judge.
- \* If the property owner is dissatisfied with the ARB’s decision, the owner has the right to appeal the decision.
- \* Dependent upon the facts and type of property, the property owner may file the appeal with the local district court, appeal to binding arbitration, or may appeal to the State Office of Administrative Hearings (SOAH.) License holders should advise their clients who have chosen to appeal to consult an attorney. The attorney may ask the license holder to assist in research.

More information is available on the Comptroller’s Property Tax Assistance website <https://comptroller.texas.gov/taxes/property-tax/> under these titles:

- \* Appraisal Protests and Appeals;
- \* Appraisal Review Board Manual;
- \* Paying Your Taxes;
- \* Property Tax Basics;
- \* Taxpayer Bill of Rights;
- \* Texas Property Tax Code; and,
- \* Valuing Property.



## How may a license holder assist a client in the valuation process?

- \* A geographically competent agent may provide accurate comparable sales data to the client; and,
- \* A geographically competent agent may recommend attorneys, licensed appraisers, property tax consultants, and other professionals to assist the client in preparation for their valuation arguments.

## Special Considerations

It is not uncommon for civil engineers, architects and other professionals to consult on unique characteristics of commercial property and the impact on value. Similarly, hydrologists, agricultural business professionals, and other professional consultants may be called upon to offer opinions on unique characteristics of farm and/or ranch property and the impact on value.

License holders should guard against providing any advice to their clients that is outside their area of expertise.

## Property Tax Exemptions

Exemptions and special valuations available to property owners include:

- Homestead exemption;
- Over 65 exemption;
- Agricultural valuation; and
- Wildlife valuations.

Unless the license holder is geographically competent to advise the client in how to qualify and obtain approval for one of the exemptions or special

valuations, the license holder should advise the client to **consult with an attorney or ad valorem tax expert.**

## Paragraph 13 - Prorations

Paragraph 13 of the One to Four Family Residential Contract (Resale) addresses ad valorem tax prorations. Often, the closing will occur before the current year's valuation has been proposed and the tax rates for that year are known. The title company will estimate the taxes based upon the best available information at the time, and then prorate.

Similarly, Paragraph 13 of the Farm and Ranch contract addresses ad valorem tax prorations, but include additional information in (13) (A) due to the unique characteristics of farm and ranch properties. Paragraph (13) (B) relates to rollback taxes.

If the land is qualified for an agricultural appraisal, but the property owner changes its use to non-agricultural, the property owner will owe a rollback tax for each of the previous three (3) years in which the land received the lower appraisal. The rollback tax is the difference between the taxes paid on the land's agricultural value and the taxes that would have been paid if the land had been taxed at a higher market value.

Additionally, five-percent (5%) interest is charged for each year from the date that the taxes would have been due.

The chief appraiser determines if a change to a non-agricultural use has been made and sends a notice of the change. If the property owner disagrees, the owner may file a protest with the Appraisal Review Board (ARB). The owner must file the protest within 30 days of the date the notice was mailed. The ARB then

**13. PRORATIONS:** Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.

### **13. PRORATIONS AND ROLLBACK TAXES:**

- PRORATIONS:** Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year. Rentals which are unknown at time of closing will be prorated between Buyer and Seller when they become known.
- ROLLBACK TAXES:** If this sale or Buyer's use of the Property after closing results in the assessment of additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Buyer. If Assessments are imposed because of Seller's use or change in use of the Property prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

decides the outcome. If the property owner does not protest or if the ARB decides against the owner's position, the owner owes the rollback tax, subject to the due process of appeal by the owner.

The Farm and Ranch contract form clearly places the obligation to pay the rollback taxes on the party (buyer or seller) who changes the use. Note that paragraph (13) (B) "survives the closing."

## Rollback Taxes

While a license holder could assist their client in researching the consequences of rollback determinations, the warning is clear – the appraisal district determines the final rollback cost.

As a best practice license holders should advise their clients to contact the appraisal district to fully understand the consequences of a change of use from agricultural valuation to a non-agricultural in a particular district.

## In Conclusion

With the news of increasing demand for property in Texas as evidenced by the current market conditions, ad valorem taxes will surely increase for all Texas property owners.

License holders may assist their clients by:

1. Helping them understand the process of ad valorem taxation in Texas;
2. Providing them with research sources available to the public, such as comparable sales information; and
3. Recommending they consult an attorney or ad valorem tax expert.

License holder should **NOT**

1. Offer opinions about ad valorem valuation methodology (unless the license holder holds an appraisal license);
2. Offer advice regarding ad valorem tax valuation or exemption processes; or
3. Avoid advice about how to protest a tax valuation or denial of a special exemption or valuation.

## Case Study 4

Broker Edward is in the process of obtaining a 640-acre farm and ranch listing in West Texas. Edward realizes 600 acres of the property is used for a year-round youth camp. Edward knows the seller has an agricultural valuation for 600 acres of the property. Edward suspects the appraisal district has not audited the agricultural valuation in many years. How does Edward represent the ad valorem taxation of the property to potential buyers? Are there potential problems for the seller? Are there problems that may survive the closing?

## Case Study 5

Broker Bill served as a buyer's agent in a residential transaction on Lake Travis in Austin that closed in November. The following year, his client was furious about a huge property valuation increase proposed by the Travis Central Appraisal District. The client asked Bill to represent him at the informal hearing, compile comparable data for the potential ARB hearings, and possibly a district court trial. The client all but demanded Bill's help. What can Bill do? What should Bill do?

## Case Study 6

Sales agent Delia is representing a buyer new to Plano. The Seller's Disclosure Notice her client receives shows absolutely no defects current or prior. However, Delia noticed the Collin Central Appraisal District website shows that the home's property valuation declined for the two prior consecutive years. What should Delia advise her client to do?

## A

# NATIONAL ASSOCIATION OF REALTORS® CODE OF ETHICS AND STANDARDS OF PRACTICE ARTICLE 11

## Introduction

Brokers who are members of Texas Realtors® may purchase guidebooks that suggest methods and procedures to follow to ensure your sponsored agents are geographically competent in their chosen type of real estate brokerage. Without doubt, brokers who sponsor agents should consult their attorney for guidance in developing competency assessment tools.

The National Association of Realtors® Code of Ethics and Standards of Practice has been in existence since 1913. The “Code” sets standards for some 1.3 million-member agents across the United States. Articles 2, 11, and 12 offer specific guidelines and standards that a prudent agent would follow in order to be competent in the area and specific type of real estate being considered. In Article 2, in order to avoid exaggeration, misrepresentation, or concealment of pertinent facts a REALTOR® would have to have geographically and specific type of property competence.

Article 11 directly requires a REALTOR® to conform to the standards of practice and competence necessary for a specific type of property. Article 11, Standard of Practice 11-1 provides very specific guidelines for REALTORS® when they provide opinions of value or price (in Texas license holders cannot provide an opinion of “value” but are allowed to provide estimates of price – see TREC rule §535.17).

There are without doubt many other practices that diligent professional agents can use to become competent in any local marketplace. Any and all of the above suggestions can be modified to fit any and all types of real estate. Now it is the law – a license holder must be competent in the in the geographic marketplace and the specific type of real estate being purchased, sold, or leased. Through competence license holders better serve the public.

## NAR Code of Ethics and Standards of Practice Article 11

The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably

expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. (Amended 1/10)

### Standard of Practice 11-1

When REALTORS® prepare opinions of real property value or price they must:

- 1) be knowledgeable about the type of property being valued,
- 2) have access to the information and resources necessary to formulate an accurate opinion, and
- 3) be familiar with the area where the subject property is located

unless lack of any of these is disclosed to the party requesting the opinion in advance.

When an opinion of value or price is prepared other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, the opinion shall include the following unless the party requesting the opinion requires a specific type of report or different data set:

- 1) identification of the subject property
- 2) date prepared
- 3) defined value or price
- 4) limiting conditions, including statements of purpose(s) and intended user(s)
- 5) any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants
- 6) basis for the opinion, including applicable market data

- 7) if the opinion is not an appraisal, a statement to that effect
- 8) disclosure of whether and when a physical inspection of the property's exterior was conducted
- 9) disclosure of whether and when a physical inspection of the property's interior was conducted
- 10) disclosure of whether the REALTOR® has any conflicts of interest (Amended 1/14)

### **Standard of Practice 11-2**

The obligations of the Code of Ethics in respect of real estate disciplines other than appraisal shall be interpreted and applied in accordance with the standards of competence and practice which clients and the public reasonably require to protect their rights and interests considering the complexity of the transaction, the availability of expert assistance, and, where the REALTOR® is an agent or subagent, the obligations of a fiduciary. (Adopted 1/95)

### **Standard of Practice 11-3**

When REALTORS® provide consultive services to clients which involve advice or counsel for a fee (not a commission), such advice shall be rendered in an objective manner and the fee shall not be contingent on the substance of the advice or counsel given. If brokerage or transaction services are to be provided in addition to consultive services, a separate compensation may be paid with prior agreement between the client and REALTOR®. (Adopted 1/96)

### **Standard of Practice 11-4**

The competency required by Article 11 relates to services contracted for between REALTORS® and their clients or customers; the duties expressly imposed by the Code of Ethics; and the duties imposed by law or regulation. (Adopted 1/02)



## APPENDIX

# B

## ARTICLE "NAVIGATING SELLER'S DISCLOSURE AFTER HARVEY"

BY CHARLES PORTER AND GARY PATE, TEXAS REALTOR, NOVEMBER 2017



Texans with properties that flooded after Harvey must disclose this to prospective buyers.

**By Dr. Charles Porter, Gary L. Pate**  
**November 01, 2017**

In the aftermath of Harvey, many are wondering about the duties of disclosure real estate agents owe to buyers and sellers.

The Texas Real Estate License Act (Chapter 1101, Texas Occupations Code) lists a number of ways in which real estate agents' behavior could result in suspension or revocation of licensure. Among others, Sections 1101.652 (b)(1-4) are germane to agents' behavior related to the disclosure of flooding. Specifically, agents are required to disclose to a potential buyer "a significant defect, including a latent structural defect, known to the license holder that would be a significant factor to a reasonable and prudent buyer in making a decision to purchase real property."

The seller's disclosure notice is not the real estate agent's disclosure but the seller's disclosure. While you may provide the form and answer questions about it, you should not complete the form for a seller. Stress to sellers the importance of answering the questions honestly and thoroughly. It is hard to imagine a seller harmed by over-disclosure.

As to flooding of real property, there is no doubt this condition is a significant defect that must be disclosed to a potential buyer if actually known to the agent. Although the License Act only requires disclosure of what is actually known, it is possible a court could impose a broader standard of "ought to have known" on license holders.

As a fiduciary, license holders must represent the interest of their clients and perform services with the necessary levels of integrity and competency. After Hurricane Harvey flooding in Houston and the massive publicity worldwide, it seems improbable that any real estate agent in the southeast Texas area did not know about the event. An agent's fiduciary duty may require a license holder to investigate for their clients whether a property in the Houston area actually flooded.

Members of the Texas REALTORS® have exclusive access to the Seller's Disclosure Notice (TAR 1406), which has options to disclose information about a property's flooding history, including whether there has been flooding and if there is present flood insurance coverage.

## Do's and don'ts for disclosure about flooding

**Do ask questions about flooding events.** You may need to contact FEMA or local authorities to dig deeper into the flooding event and what, if anything, governmental authorities had done to remedy future flooding. TREC rules also indicate that if an agent doesn't ask these kinds of questions, the agent could be guilty of an act of omission if the agent chooses not to make further inquiries.

**Do advise clients to inquire about the flood zone.** Buyer's agents should have their clients determine if the property is situated in a flood zone and to check on the availability of flood insurance. You may want to provide this information to your buyers in writing.

**Don't offer legal or engineering advice.** This is only appropriate if you hold licenses in those professions. Tell your client to instead seek the assistance of an attorney, civil engineer, or other appropriate professional so he or she can understand the risks involved in a property that has flooded or could flood in the future.

**Do carefully consider what you disclose.** In the event a homeowner whose property flooded seeks legal action against you for flood-related disclosures, attorneys will question

- \* What did you actually know about prior flooding of the property in question or about the property's location inside a FEMA-designated flood zone?
- \* What did you tell potential buyers or sellers of your actual knowledge?
- \* When did you tell potential buyers or sellers of your actual knowledge of the property's flooding issues?

Will there be court rulings in future lawsuits involving real estate agents in the aftermath of Hurricane Harvey's flooding that clarify the duties agents owe clients and customers? Perhaps, but there is no doubt you already must disclose your actual knowledge about flooding events to any purchaser.

**Dr. Charles Porter** is an author, teacher, Texas real estate broker, and testifying water rights and real estate expert named in over 600 cases. He is a visiting professor in the College of Arts and Humanities–University Studies at St. Edward's University in Austin.

**Gary L. Pate** is a partner with Martin, Disiere, Jefferson & Wisdom, L.L.P. in Houston and is co-chair of the commercial and residential real estate section of the firm.

## APPENDIX

# C

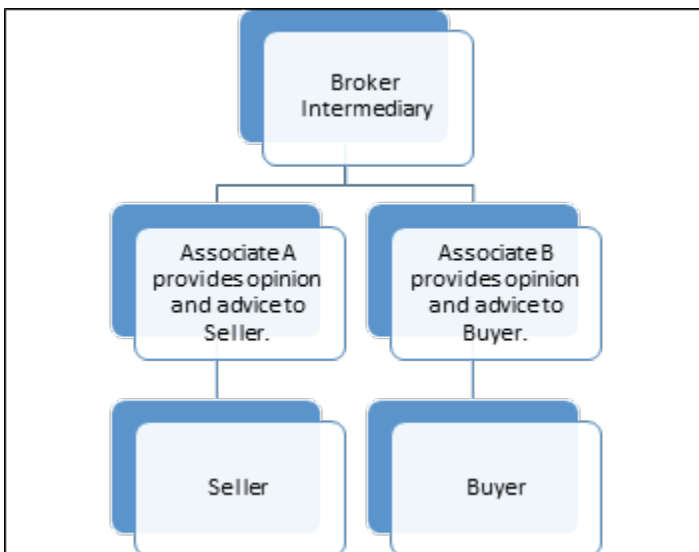
## STEPS TO INTERMEDIARY

**Step 1:** Obtain written consent that authorizes the broker to act as intermediary and states the source of any expected compensation to the broker.

- \* If the written consent is contained in a representation agreement, it must include additional language in accordance with Section 1101.559(b), Texas Occupations Code.
- \* The written consent may be obtained at the time the intermediary situation presents itself, if not preemptively given.
- \* If the written consent doesn't allow appointments or until a broker has appointed license holders under Step 2 below no advice or opinions can be given by the license holder, broker, or any other license holders in the brokerage.

**Step 2:** If the written consent permits, the broker must decide whether or not to appoint two separate license holders, one to each party, who may communicate with, carry out the instructions of, and provide opinions and advice to the parties to whom that associated license holder is appointed. If the broker makes appointments, written notice of the appointments must be provided to the parties in the transaction.

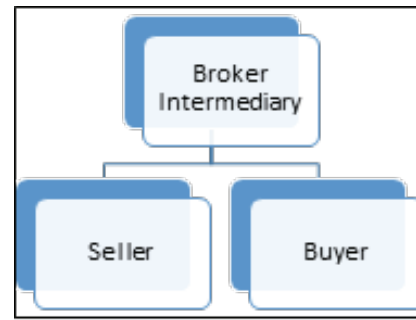
### Example of intermediary with appointments



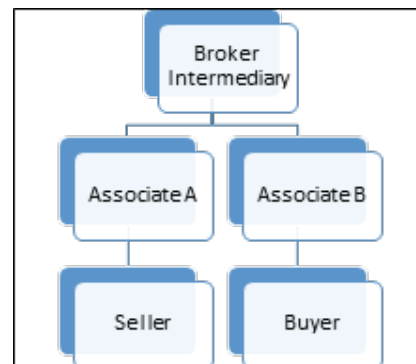
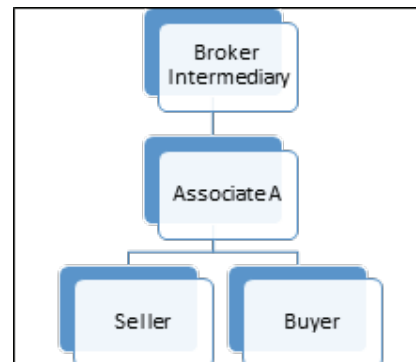
### Examples of intermediary with no appointments

In these scenarios, the license holders may not provide opinions or advice to the parties. The license holders may process, facilitate the transaction, and assist the parties as neutral service providers.

- \* A broker who is a solo practitioner cannot make appointments because no appointments are possible.



- \* A broker may choose to not make appointments by policy. In this case, associates may not provide opinions or advice during negotiations to the party each is serving.



**Step 3:** Conduct the intermediary transaction in accordance with specific provisions, as detailed in Section 1101.651(d), Texas Occupations Code.

A broker and any broker or sales agent appointed under Section 1101.560 who acts as an intermediary under Subchapter L may not:

- (1) disclose to the buyer or tenant that the seller or landlord will accept a price less than the asking price, unless otherwise instructed in a separate writing by the seller or landlord;
- (2) disclose to the seller or landlord that the buyer or tenant will pay a price greater than the price submitted in a written offer to the seller or landlord, unless otherwise instructed in a separate writing by the buyer or tenant;
- (3) disclose any confidential information or any information a party specifically instructs the broker or sales agent in writing not to disclose, unless:
  - (A) the broker or sales agent is otherwise instructed in a separate writing by the respective party;
  - (B) the broker or sales agent is required to disclose the information by this chapter or a court order; or
  - (C) the information materially relates to the condition of the property;
- (4) treat a party to a transaction dishonestly; or
- (5) violate this chapter.



## ARTICLE "INTERMEDIARY: TOUCH ALL BASES ON THE WAY TO 'HOME' BASE"

BY J. RICHARD HARGIS

**Intermediary**

**Touch all bases on the way to "home" base** by J. Richard Hargis

**The agency** relationship known as "intermediary" has just concluded its fourth year of existence. Created by statute enacted in 1996, intermediary offers Texas real estate brokers a safe and practical means for representing a seller client and buyer client in the sale and purchase of a property listed by the broker.

Essentially, intermediary was created to provide brokers with an avenue to bypass the numerous pitfalls of dual agency. Moreover, intermediary is more consumer-friendly than dual agency as it allows the intermediary-broker's appointed associates to provide opinions and advice to their respective principals. The rendering of advice and opinions are not permitted under dual agency.

Establishment or formation of intermediary status does, however, require adherence to several procedural steps. In other words, if the broker or broker's associates fail to follow the procedural steps required for formation of intermediary status, all of the benefits of intermediary will be lost.

Over the past several months, information from TREC and other reliable sources indicates that some brokers and their associates periodically fail to touch all the procedural bases required for intermediary status. Missing a procedural base or two in establishing intermediary can result in disciplinary action by TREC and potential

claims from broker clients. Many times, the broker is unaware of the omissions of the associates until it is too late.

In light of recent developments, a review of the procedures required for proper formation of intermediary status should be useful. In effect, it simply is a matter of touching all the right bases.

**Step 1 - Authorization of intermediary status**

The initial process of establishing intermediary status begins before it ever becomes a reality. The first step is to obtain written authorization from the broker's seller client and buyer client for intermediary status, should events occur down the road whereby the buyer client becomes interested in purchasing (making an offer to purchase) the seller client's property. Step one, then, is an anticipatory procedure of a contingent event which may or may not ever occur. It is, to put it simply, merely an authorization for the broker to act as an intermediary if the need arises. But since the written authorization step is the first base which always must be touched, it is a critical base in the path to intermediary status.

Obtaining authorization for intermediary status should be relatively simple. On the listing side, the TAR listing agreements include a comprehensive provision for the seller to either approve or disapprove intermediary. Although the

intermediary provision in the listing agreements is comprehensive and explanatory of intermediary status, brokers and their agents should be well-versed in its provisions to offer additional explanation or clarification to the seller client, if necessary. If the seller client authorizes intermediary, step one for the listing side is accomplished. While intermediary status may never come into play, the listing agent and broker at least have written authorization in place.

Now, turning to the buyer side, a similar written authorization must be obtained from the buyer client. This side of the equation can be more tricky. Just like the TAR listings, the TAR Buyer Representation Agreement includes an intermediary provision to enable broker and buyer client to determine whether to permit intermediary status. If the broker, acting through its associate, obtains a signed buyer representation agreement which authorizes intermediary, the step-one authorization base is touched.

The trick, as so often expressed by brokers and agents, is getting a buyer to sign the buyer representation agreement. While it is always preferable to obtain a signed agreement with a buyer (if for no other reason than to cover the intermediary authorization), buyer representation can be established orally. If this is the case, and the buyer client becomes interested in



purchasing a home listed by the broker, the buyer agent will have to secure a separate written authorization from the buyer client for intermediary status in order to properly establish intermediary status. Clearly, the buyer agent representing a buyer client under an oral arrangement must be alert to the requirement for written intermediary authorization, should the need arise.

Brokers who permit associates to represent buyers without a signed buyer representation agreement should have in place an intermediary authorization form for use by its associates. The information which should be included in this separate intermediary authorization form can be derived from the intermediary provisions in the TAR listing agreements and TAR Buyer Representation Agreement.

Please remember that failure to obtain written authorization from both the seller client and buyer client for the broker to act as intermediary generally is irretrievable. That is to say, if you fail to touch the first base of intermediary, the entire process is tainted.

**Step 2 - Notification of intermediary status and appointment of associates**

The second step of the procedural process becomes necessary when, in fact, a broker's buyer client desires to make an offer for a property listed by the broker. Assuming written authorizations are in place (which they must be) and assuming further that the broker or manager of the brokerage firm has no knowledge of the impending interaction between the broker's seller and buyer clients, the listing agent

**TAR Chairman of the Board Louise Hull has appointed a task force that will travel to several areas around the state asking for member input on agency issues. For places and times, see page 10. If you are unable to attend one of the forums, please e-mail your comments to [agency@tar.org](mailto:agency@tar.org).**

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and buyer agent must alert the broker to the development and proceed to effect the second step of the intermediary process. Step two is accomplished by the broker, acting through its associates, presenting the Notification of Intermediary Relationship (TAR-027) to both the seller client and buyer client for their signatures. The notification procedure should be accomplished at or before the time an offer is submitted by the buyer. While it can be a challenge getting all the paperwork presented and signed, it is an absolute necessity to complete the process.

The Notification of Intermediary Relationship should include the broker's appointment of associates to act for the seller and buyer, respectively. In most instances, the broker will appoint the listing agent for the seller and the buyer agent for the buyer. This makes perfect sense in as much as these are the broker's associates who have an established relationship with their respective principal. In the rare, but not unusual situation of the seller and buyer being the clients of the same agent, the agent should choose which principal he or she wishes to accept appointment, and the broker should appoint another agent of the firm to the other principal. Once written notification of intermediary relationship is made, including appointment of the broker's associates to act for the seller and buyer, the required procedures or prerequisites of intermediary are fulfilled. All of the bases have been touched and the transaction may proceed.

**Step 3 - The transaction**

Once intermediary status is firmly

established, the real benefits of intermediary begin to take shape. Specifically, the intermediary broker's appointed associates can answer substantive questions, give advice and opinions on such matters as the adequacy of an offer or how best to structure the transaction. Such acts are impermissible under dual agency.

Significantly, appointed associates of an intermediary have the opportunity to express opinions and not just assist the parties with paperwork, thereby increasing the value of their services. Now, there are still certain things the intermediary broker and the appointed associates cannot do (without written consent of the appointed party):

- cannot divulge that the seller will accept a price less than the listing price
- cannot divulge that the buyer will pay a price greater than the price submitted in a written offer
- cannot divulge confidential information of either party.

The above steps associated with the formation, authorization, and conduct of intermediary status are necessary requirements for compliance with the intermediary statute. The process of fulfilling the required procedures can be cumbersome, but the benefits of intermediary far outweigh the alternative. The recent outbreak of complaints and claims involving intermediary have occurred because of the absence of the written authorization of the seller and buyer and subsequent notification letters. Brokers and their agents who touch all the bases (written authorization, written notification of

intermediary status, and compliance with permissible activities) will avoid any such problems. ★

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*This article was reprinted with permission from the April 2000 issue of the Houston Association of REALTORS® Network.*

*Note from TAR Associate Counsel Dennis R. Schmidt: Where the broker's office policy does not permit the appointment of associates to communicate with, carry out instructions of, and provide opinions and advice during negotiations to each party, or in firms that do not have at least a broker and two associates, the Notification of Intermediary Relationship Form should still be used to satisfy the due-diligence requirements of notice and to provide an opportunity for the parties to object to or ratify their original consent to the intermediary relationship. Without appointing associates, the broker and all associates will act as an intermediary and will treat all parties honestly and fairly so as not to favor one party over the other.*

*TAR has an Agency Policy Manual, which will help a broker establish a detailed office policy covering the way agents will handle the various agency relationships authorized by Texas law and which includes guidance along each step of the process. To order the Agency Policy Manual, call TAR's Products and Services Department at 800/873-9155.*





## APPENDIX

# E

## AFLALO V. HARRIS – A CIVIL CASE IN DALLAS COUNTY UPDATE

**Facts:** Aflalo used the Texas REALTORS® Seller’s Disclosure Notice (TXR 1406) when selling his property. Aflalo indicated on the Notice that he did have flood insurance, but he did not attach TXR 1414, Information About Special Flood Hazard Areas, as the form instructs. Harris (buyer) terminated the contract due to Aflalo not providing a complete Seller’s Disclosure Notice under Texas Property Code 5.008.

**Previous Court Proceedings:** Aflalo lost at the trial court. The court ruled that by using the Texas Realtors® Seller’s Disclosure Notice, the disclosure requirement was increased above and beyond the requirements in the Texas Property Code. The Texas Court of Appeals reversed the trial court and ruled in favor of Aflalo. Harris (buyer) appealed to the Texas Supreme Court.

**Update:** On May 1st, 2020 the Texas Supreme Court declined to review the case, which means the Court of Appeals ruling in favor of Aflalo holds. The Texas REALTORS® Seller’s Disclosure Notice does not add additional disclosure requirements beyond the Texas Property Code. The case is being sent back to the trial court.

There was also a lawsuit by the seller against the broker for not providing the additional form TXR 1414, Information About Special Flood Hazard Areas, which was put on hold. In January, 2021, the trial court joined the Aflalo v. Harris case and the lawsuit against the broker styled Aflalo v. Stapp. The court will hear the cases together. The suit against the broker seeks damages up to \$1 million.



## APPENDIX

# F

## BROKER PRICE OPINION Q&A

License holders may offer assistance to their clients in determining the asking price of a property but cannot offer an opinion of value unless holding an appraiser's license. According to the National Association of Realtors' student manual, "BPOs: The Agent's Role in the Valuation Process", the Broker's Price Opinion is an estimate of the probable selling price of a property generally done for a third party such as a lender."

### **Why can't a real estate license holder use the word "value" when speaking to a seller or buyer about the price of a piece of property?**

According to TREC rule §535.17(a) "A real estate license holder may not perform an appraisal of, or provide an opinion of value for, real property unless the license holder is licensed or certified under Texas Occupations Code, Chapter 1103."

Chapter 1103 of the Occupations Code is the licensing of appraisers.

### **Is there a disclosure that must be used when providing a "broker opinion of price?"**

Yes, the Texas Real Estate Commission requires these words from TREC rule §535.17(b): "This represents an estimated sale price for this property. It is not the same as the opinion of value in an appraisal developed by a licensed appraiser under the Uniform Standards of Professional Appraisal Practice."

### **What is the difference in a CMA and a BPO?**

Generally a CMA (comparative market analysis) is used by a license holder to assist a consumer in determining the best price for the property while a BPO (broker's price opinion) is used when requested by a third party or an entity seller needing to know a best price for a property. A third party entity could be a bank, the IRS, or a judge in a civil case.

### **What must be kept in your files?**

A CMA for every listing and for every buyer. TREC rule §535.2(h)(7) requires brokers to maintain appraisals, broker price opinions, and comparative market analyses for four years.;

### **What must be given to a seller when a license holder is the buyer?**

TREC rule §535.16(c) states "A real estate license holder is obligated to provide a broker price opinion or comparative market analysis on a property when negotiating a listing or offering to purchase the property for the license holder's own account as a result of contact made while acting as a real estate agent."





## APPENDIX



# WATER AND MINERAL RIGHTS FURTHER READING

### Water Rights

For maps, publications, and additional information, go to:

- \* TCEQ's GCD webpages <https://www.tceq.texas.gov/groundwater/groundwater-planning-assessment/districts.html>;
- \* The Texas Water Development Board's GCD webpage at [https://www.twdb.texas.gov/groundwater/conservation\\_districts/index.asp](https://www.twdb.texas.gov/groundwater/conservation_districts/index.asp);
- \* The RRC at <https://www.rrc.texas.gov/>;
- \* The Texas A&M AgriLife Extension Service's Questions about Groundwater Conservation Districts in Texas at <https://www.agrilifebookstore.org/Default.asp>;
- \* The Texas Alliance of Groundwater Districts at <https://www.texasgroundwater.org/>; and,
- \* The Texas Groundwater Protection Committee's FAQ webpage at <https://tgpc.texas.gov/frequently-asked-questions-faqs>

### Mineral Rights

For an attorney peer-reviewed overview of mineral rights in Texas, refer to **Texas Realtor** Magazine, Jan/Feb 2015, written by Charles Porter, PhD, "What you need to know about mineral rights."





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