

Legal Update

Part 1

Edition 8.0



Texas Real Estate Commission

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Law Law Land

Statute Rule Update &



Maybe you are like Sebastian and Mia dancing through the streets and singing about your dreams of success one day. Good for you, but beware, raw talent will only take you so far. You have to know the ropes before you can catch your big break. Here are the new statutory provisions and rule amendments that were adopted in the last few years. As a license holder, you are responsible for keeping up with law and rule changes and making sure your brokerage practice complies. Pay attention, or the break you catch might be a break in licensure!

Statutory Changes — New Song and Dance Routines

Senate Bill 2212 - Equity Interests

This bill amends Chapter 1101 of the Occupations Code to codify the recently adopted amendments to 22 TAC 535.5 regarding equitable interests in real property. In the same manner as the rule, this statutory change clarifies that a person selling or offering to sell an option or assigning an interest in a contract to purchase

real property is engaged in brokerage if they do not accurately disclose to potential buyers the nature of the interest offered. This bill also amends the Property Code to require the seller of an equitable interest, when selling or offering to sell an option or assigning an interest in a contract to purchase real property, to disclose the same to any potential buyer.

What is the difference between legal ownership and equitable ownership?

Legal ownership – a person actually owns the property

Equitable ownership – a person owns some sort of beneficial interest in the property

If Mario is the buyer under a purchase contract, he owns an equitable interest in the property. He may sell and assign the equitable interest to Luigi. Once Luigi purchases the property, he becomes the legal owner, but until then, he has only an equitable interest. SB 2212 clarifies that a person may sell or offer to sell an option or assign an interest in a contract to purchase real property as long as he or she discloses that all that is being sold is the option/assignment and that the person does not own the property. If the person does not make the required disclosure, then he or she is engaging in real estate brokerage and must be a real estate license holder.

Advertising

The bill also makes changes to regulations governing advertising for brokers or sales agents, eliminating the prior requirement that the advertiser be identified as a broker or agent in all advertising. However, it clarifies that an advertisement is misleading if it fails to include the name of the broker or implies that a sales agent is responsible for the operation of the brokerage. The bill also restricts any rule from requiring the use of the term broker, agent, a reference to Texas Real Estate Commission (TREC), or a license number in advertisements.

TREC Rule Changes — Quit Dancing Among the Stars and Follow These Rules

§535.83 - Designated Broker (New)

The designated broker, at the time of a transaction that is the subject of a lawsuit, is liable under Recovery Fund Claims for civil judgments against business entity brokers, whether or not they are named in the civil action.

§535.123 - Inactive Broker's License

The amendments clarify that a licensed business entity becomes inactive when it is no longer qualified to transact business in Texas, or its designated broker's license is suspended, including probated suspension or revocation.

§535.53 - Business Entity Broker, Designated Broker

The amendments clarify that a business entity must be qualified to transact business in Texas at all times to maintain an active license. The business entity must notify TREC when it is no longer qualified to transact business in Texas. In addition, the amendments

- * more fully set out the scope of required errors and omissions insurance coverage,
- * clarify that a designated broker may own at least 10 percent of the business entity through a verified ownership chain in other business entities, and
- * sets out the authorized positions for a designated broker by type of entity to alleviate confusion for applicants.

§535.55 - Education and Sponsorship Requirements for Sales Agent

The amendments align the rule with statutory changes in SB 699, enacted by the 84th Legislature, regarding the number of hours required for continuing education.

§535.45 - Certain Uses of Seal, Logo or Name Prohibited (New)

The amendments clarify that license holders may not use the seal, logo, or name of the Texas Real Estate Commission (TREC) to imply they are a government agency or have received special TREC endorsement or status.

§535.4 - License Required

The amendments clarify the definition of what constitutes showing property in light of the statutory requirement that a license holder must pass a criminal background review prior to licensure. A person must be a license holder to provide access to a property for a prospective buyer or tenant. An open house must be hosted by a license holder. The amendments also set out the circumstances under which a license holder can provide an unescorted person access to a vacant rental property.

§535.5 - License Not Required

The amendments to this rule removed the ability of an unlicensed person to host an open house and removed the provision regarding selling and buying equitable interests in property.

§535.6 - Equitable Interest in Real Property (New)

The amendments create a new rule dealing with equitable interest in property, disclosures, and the circumstances under which buying and selling equitable interests will and will not require a real estate license.

§535.2 - Broker Responsibility

The amendments clarify that a broker must notify TREC when the appointment of a delegated supervisor has ended except that a newly licensed broker or a broker associate named as a delegated supervisor is responsible to notify TREC if his or her status as a delegated supervisor changes.

Subchapters F & G

Rule amendments were adopted to continue to improve the content and delivery of qualifying and continuing education courses and instructors.

Proposed TREC Rule Changes — Is This for Real or Just a Dream Sequence? (likely changes before 1/1/18)

§535.154 & §535.155 - Advertising Rules

This rule will implement statutory changes, add definitions for clarity, and require registration of assumed business names and team names prior to use in advertising, and consolidate and clarify rule provisions regarding what is considered a misleading advertisement.

§535.17 - Broker Price Opinion

The rule is expanded to apply to all estimated worth or sales price statements and shorten the required disclosure.

§531.18 & §531.20 - Consumer Notice and IABS

The amendment specifies requirements to ensure the links to the notices are readily noticeable to consumers. This is particularly important in light of the statutory changes to advertising requirements.

§537.11 - Form Preparation

The amendments clarify when a license holder can hire an attorney to prepare a form for use by the license holder's clients and the specific disclosures such a form must contain. The remaining amendments to the rule consolidate and update how a license holder can use the standard contract forms approved by the TREC and what is considered the unauthorized practice of law.

Leasing



Legislative Summary

House Bill 804

Amends Tax Code, Section 41.413, Effective September 1, 2017

Relating to the entitlement of a lessee of property who is required to pay the ad valorem taxes on the property to receive notice of the appraised value of the property.

Provides that the owner of the property must send to the tenant obligated to pay taxes a notice of appraised value within 15 days following receipt of the notice, provided that this notice requirement does not apply if the landlord and tenant have agreed to waive the requirements of this subsection or the tenant has agreed not to protest the appraised value. Upon request of the tenant, the chief appraiser shall send the notice of the value to the tenant, provided that the tenant evidences his contractual obligation to reimburse the property owner for taxes. The chief

appraiser's requirement to provide the notice is abated if notice is posted on the appraisal district's website not later than the fifth day after the date the notice is sent to the property owner. The tenant may designate a third party to receive or act as the tenant's agent under this amendment.

House Bill 1288

Amends Local Government Code, Section 263.008, Effective: Immediate

Relating to broker agreements for the leasing of real property owned by a county.

Authorizes counties to contract with real estate brokers to lease county property, subject to some restrictions, as an exception from auction requirements. (Expands existing authority for counties to contract with brokers to sell property.)

A Real Estate Agent in Texas Cannot Represent No One...

Once a person has successfully completed all of TREC's pre-licensing requirements, passed the license test, and found a sponsoring broker, he or she may represent buyers, sellers, landlords and tenants in a real estate transaction under the authority of the sponsoring broker. Generally, when representing a seller or landlord, a listing agreement is executed by the owner of the property and the broker to give the real estate broker the authority to act as the owner's agent. The owner agrees to pay a commission or fee to the broker for performing the duties named in the agreement. To advertise a property properly, whether a commercial or residential listing, means having a valid listing agreement.

What is a Lease Listing Agent v. a Leasing Agent?

Just as there are two sides in a real estate sales transaction, there are generally two sides represented in a leasing transaction.

Lease listing agent – a TREC license holder who is hired to work in the best interests of a landlord and represents the landlord in the transaction

Leasing agent – a TREC license holder who earns a fee by finding a qualified applicant for a particular property and obtains a signed lease. Leasing agents represent the best interests of the prospective tenants in the transaction. By determining the wants and needs of the prospective tenants, leasing agents are charged with

- * *showing appropriate properties to prospects,*
- * *interacting with the listing agent,*
- * *presenting the application(s) to the listing agent along with all the required paperwork, and*
- * *determining financial requirements.*

Lease listing and leasing agents might use the following questions in leasing:

- * Which qualifying criteria should be considered?
- * Does the applicant have satisfactory leasing or mortgage history?
- * Does the applicant have a satisfactory work history?
- * Does the applicant have adequate income to fulfill the terms and conditions of the lease?

Residential Leasing or Commercial Leasing?

While some agents may believe that there are vast differences between the commercial and residential leasing niches, the basics of both specialties are the same. In all cases, real estate agents are required to follow the TREC Canons of Professional Ethics, which include Fidelity, Integrity, Competency, Consumer Information, Discriminatory Practices and Information About Brokerage Services.

What is the Landlord Looking For?

Generally, a landlord authorizes the broker to perform specific duties to obtain a qualified tenant and to properly and adequately market the property for lease. A lease listing agent should counsel with the landlord to make sure there are reasonable expectations. Some questions to ask might be:

- * What is the objective of the landlord?
- * Was it accidental, or was it a conscious decision to own rental properties to establish wealth?
- * Does the landlord expect positive cash flow or just need to “stop the bleeding?”

In order to accomplish the goals set out by the landlord, the lease listing agent needs to be knowledgeable of the market in which the property is located and the many issues that can affect the lease listing. The most common items to be considered are property age, updates to the property, the economy of the area, and the time of year. Generally, a property that is appropriately priced and in good condition should lease within 45 days of the listing going active.

To price a listing appropriately for a particular market, the lease listing agent should complete a market analysis. Clients have many third party resources to determine real estate pricing, so a lease listing agent must be accurate and able to provide back up for the pricing strategy. The lease listing agent is being hired for his or her knowledge and expertise in this particular real estate niche.

DISCUSSION

1. What resources do real estate agents have to provide a market analysis to the landlord?
2. What is the limit of the agent’s authority?

License holders need to be familiar with the various contracts and agreements available from various entities, including listing agreements and leases. An agent who is a member of a local, state and national real estate trade association will find plenty of assets available, including contract forms. One of the benefits to membership in these organizations is that the contracts and addenda refer to each other, and when used properly, may reduce the liability that can affect the cooperating agents in a lease transaction.

Considering the Applications and the Applicants

Today’s society is volatile, and agents need to keep the leasing application process non-personal and professional. A best practice is to refer only to the applications and the applicants during the screening process. Another good practice is to make sure any special applicant requests have been reviewed and approved in advance, before the application processing has begun and before the application fees have been spent. Examples of special applicant requests could include

- * possession dates that are too far from the availability date,
- * lease rates other than the listing rate,
- * accommodations for pets outside the stated accepted weight or breed limits, or
- * requests for repairs not previously approved by the landlord.

The leasing agent should review the required paperwork to ensure that the requested information is complete and accurate to the best of his or her knowledge. Incomplete applications will only slow the verification processes and delay the approval of the lease applications.

Although it is not always the case, a lease listing agent should assume that the leasing agent has a fiduciary responsibility to the applicants; therefore, the lease listing agent should not be in direct communication with the applicants. A leasing agent should respond in a timely manner to the lease listing agent if there is incomplete information on the applications, or if there are questions for the applicants. Many times, the lease listing agent will ask permission of the leasing agent to communicate directly with the applicants, and a best practice would be for this request and permission to be confirmed in writing. Email communications are a great tool for documenting these requests.

DISCUSSION

1. Is the broker required to obtain the owner's written permission before offering the unit for rent?
2. Must a property owner's employee be a license holder to lease or rent real property? Owner?
3. What is the authorization to be a leasing agent or a lease listing agent?
4. What does the broker require of a sponsored agent to prove the agent's competence as a leasing agent or a lease listing agent?

Fair Housing

All license holders, no matter their specialty or niche markets, need to be aware of the Fair Housing Act and discriminatory practices. All license holders have to pay attention to Fair Housing issues when listing properties for lease or when representing applicants for available housing. More in-depth discussions about Fair Housing will be presented in Legal Update II.

Reasonable Accommodation

Under the Fair Housing Act, a reasonable accommodation is 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 areas. For example, a visually impaired rental applicant wants to live in a property with a guide dog, but the landlord has a no pets policy. The reasonable accommodation would be to allow the applicant to have the guide dog in the rental property, despite the policy, to afford the applicant equal opportunity to use and enjoy the dwelling.

Service Animals & Emotional Support Animals

A service animal is defined as a canine or miniature horse that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability. Service animals are working animals, not pets. Examples of such work or tasks include

- * guiding people who are blind,
- * alerting people who are deaf,
- * pulling a wheelchair,
- * alerting and protecting a person who is having a seizure,
- * reminding a person with mental illness to take prescribed medications, and
- * calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack.

ADA regulations have a new, separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities. The regulations set out four factors to assist entities in determining whether miniature horses can be accommodated in their facility:



miniature horse is housebroken,

miniature horse is under the owner's control,

facility can accommodate the miniature horse's type, size and weight, and

miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

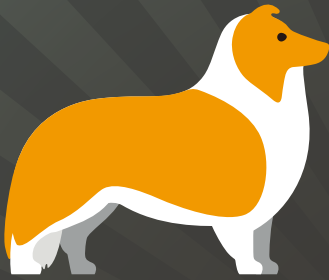
An *emotional support animal* (ESA) is a companion animal that a medical professional has determined provides benefit for an individual with a disability. To be afforded protection under federal law, a person must meet the federal definition of disability and must have a note from a physician or other medical professional stating that the person has that disability and that the emotional support animal provides a benefit for the individual with the disability. An animal does not need specific training to become an emotional support animal.

A *therapy dog* is a canine trained to provide affection and comfort to people in hospitals, retirement homes, nursing homes, schools, hospices, disaster areas, and to people with autism. Therapy dogs are usually not assistance or service dogs, but they can be one or both with some organizations. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

3

TYPES OF

Support Animals



Service Animals

Therapy Dogs

Emotional Support

ADA covered: Rights to bring animal into public establishments



Needs to tolerate a wide variety of experiences, environments, people



May live with their disabled owners, even if "No Pets" policy in place



Primary function is to provide emotional support, through companionship



Specifically trained to assist just one person



Provide emotional support and comfort to many people



Generally speaking, a tenant who wants a no pets policy waiver for a service/emotional support animal may meet this burden by providing a letter from a physician or mental health professional. The letter should state that the

- * tenant has a disability,
- * animal is needed to lessen the effects of the disability, and
- * animal should be allowed in the rental unit as a reasonable accommodation for the disability.

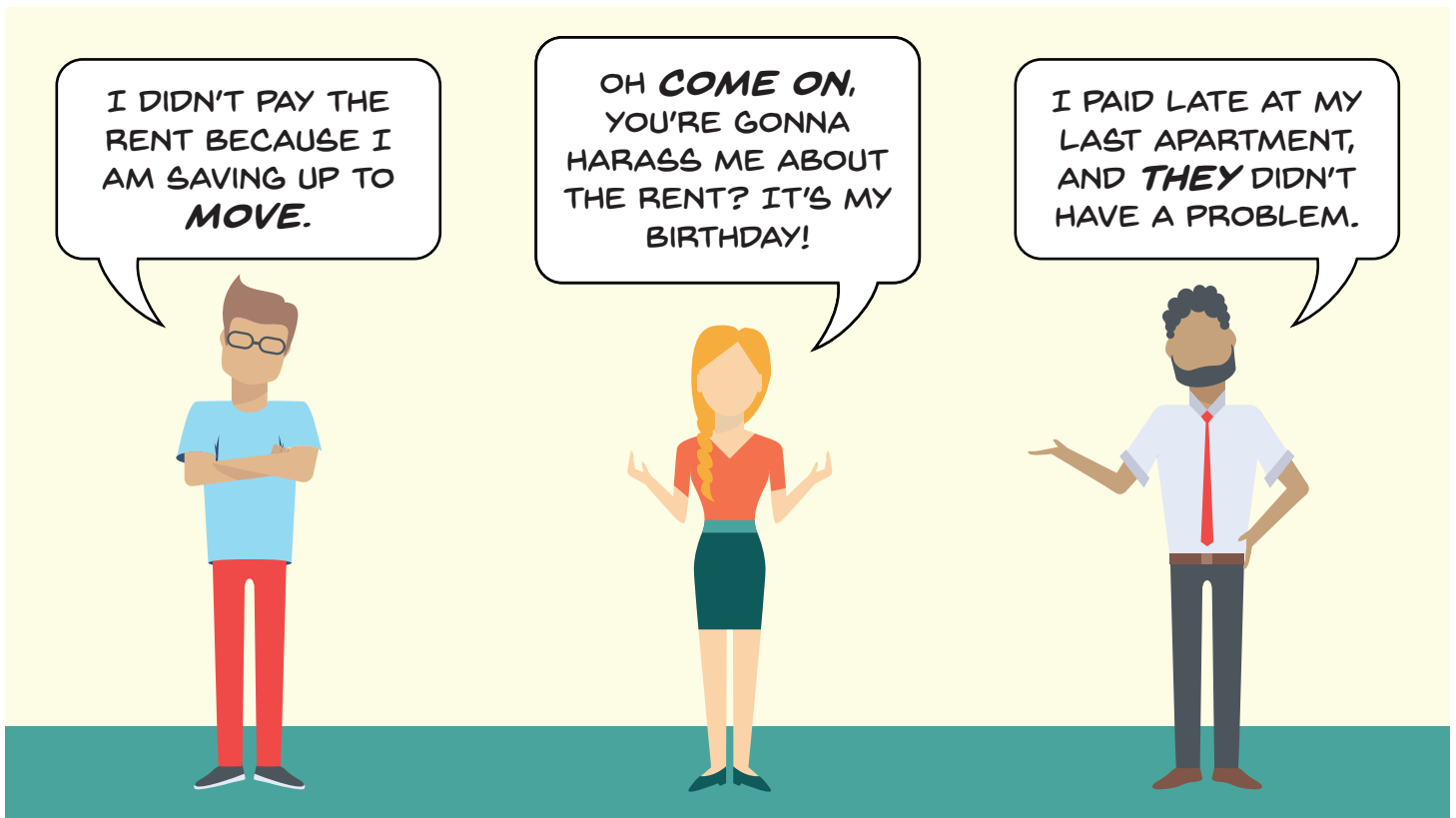
The landlord is entitled to ask for supporting materials that document the need for a service animal or an emotional support animal.

A landlord may not require a person with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation. A landlord may be able to recoup reasonable fees from the tenant for damage done after the fact by a service or support animal.

DISCUSSION

Do I have to grant all requests for assistance animals?

Property Management



Dear Hamish:

This is a copy of the note that I sent to each of the tenants:

I have enclosed two envelopes that you can use to send me the items that you would normally send to my post office box. Katrina (my banker) will only deposit the check. She **ONLY DEPOSITS** cash into my account. Any other information should be sent to my post office box.

Thanks for your help. Per our conversations, the tenants you found seem nice, and I hope they won't cause you any trouble. I appreciate you acting as a go between for me while I am out of the country.

Mortimer

cont.

Mabel, Hamish and Mortimer's broker, was surprised when she came across this letter. Mortimer is one of her long-term agents, and he specializes in leasing. When Mabel read the letter, she was surprised because it seemed to her that Mortimer was engaging in property management without her knowledge or consent.

DISCUSSION

How would you counsel your agent if you received a letter like this?

A potential risk for brokers can arise when agents serve as property managers. In most cases, anyone with a real estate license may provide property management services, and in Texas, no separate property management licensure is required. Property management is a specialized service that requires special training; it is not usually covered by basic E&O Insurance. Three potential risks can arise from managing a property.

1. A homeowner may assert property damage against the broker or the broker's agent if the owner believes the condition of the property has deteriorated while it was being managed by the broker. The property's deterioration could be the result either from normal wear and tear or by damage caused by the tenants.
2. The real estate license holder could also be a target for claims from tenants or visitors alleging injuries on the property, as premises liability is the greatest area of liability for property managers.
3. The broker may have increased liability while managing property, because he or she may be presumed to have more knowledge of the property.

A broker whose sales agents engage in property management is well advised to follow certain best practices.

- * Require agents to notify the broker about any property management arrangements being undertaken.
- * Require that a written property management agreement should be entered into between the property owner and the brokerage that includes
 - » the duties and responsibilities of each party,
 - » a description of the condition of the property at the time when management begins,
 - » the process for making and paying for repairs,
 - » the length of time that the property will be managed, and
 - » provisions addressing limitation of liability and indemnification.

Claims against brokers and sales agents who manage property are on the rise. Occasionally, agents inadvertently become property managers by virtue of their activities. With an increase in claims relating to property management, precautions are necessary in the event that license holders intentionally or unintentionally perform the duties of a property manager. Keep segregated accounts for security deposits and other deposits, and use specialized accounting to keep accurate financial records. Also, keep extensive notes about anything that happens on the property, as these notes may later be needed to protect the property manager from claims.

An informal survey of Texas license holders that perform property management services cited the following challenges when asked which recurring themes they encounter on a day-to-day basis:

- * agents who are managing properties without the knowledge or permission of their brokers,
- * agents not depositing rent and deposit monies into a trust account,
- * agents and brokers not understanding why they need a trust account,
- * agents and brokers drafting leases that include the brokerage as a party to the agreement instead of the property owner.

Inexperienced Agents Performing Duties of a Property Manager

In order to generate additional income, license holders often veer off into leasing and (unknowingly) property management. Sometimes this starts as a favor to a friend; sometimes it is to assist a client with a sales listing that is not attracting buyers. Inexperienced agents can make errors that can lead to Fair Housing claims or trust fund violations. All license holders should seek specialized training if they are interested in leasing or property management.

Trust Accounts

Property managers must have at least one trust account. A best practice is to have a separate trust account for owner funds and a separate trust account for tenant security deposit funds. The broker can determine the office policy as to whether or not individual properties have separate accounts.

Owners' accounts are typically used to deposit rents collected from the tenants on a monthly basis. Disbursements made from these accounts include payments made to vendors for repairs to the properties, management fees paid to the property manager, and proceeds of the monthly rents paid to the landlord.

Tenant security deposit accounts are used only as an account to deposit funds received by the property manager for the tenants' security deposits. Those funds are held in trust by the property manager for the tenants to ensure the tenants comply with the terms and conditions of the lease and to compensate the landlord for tenant-caused damages to the property.

Fair Housing Issues

All real estate agents need to have a good knowledge of fair housing laws, and there are some especially important issues for agents dealing with leasing and property management. These include how to advertise properties, screen applicants, or steer potential tenants to different properties. These issues will be discussed in more depth under the Fair Housing Chapter in Legal Update II.

Summary

Property management is a complicated and detail orientated real estate niche. Brokers should know what they are doing if they decide to manage property, and they should be very clear in their policy and procedures manuals about authorizing agents to provide property management services. Brokers should consider the following:

- * be sure brokerage expenses are kept completely separate from any funds held in trust for a property owner or a tenant,
- * be prepared to provide an accurate accounting of any monies held in trust,
- * keep detailed property management agreements and other paperwork in order,
- * keep accounting records up to date, and
- * keep current by staying informed about TREC rules.

It's Always Something...

DISCUSSION

Divide into groups and discuss the following:

- A. A member of the public leased her lakefront property to a single individual for a period of twelve months, and she was self-managing the property. During the initial lease terms, her neighbors began to complain to her about the number of people at the home and the noise and nuisances these tenants were causing. Upon further investigation, the landlord was able to determine that the single tenant had contracted with a real estate agent to offer the property for lease on a short-term rental basis on the weekends and during special events. Not only did this cause issues with the neighbors, but the home was on a shared septic system, and the multiple occupants caused a strain on the septic system.
- B. Two applicants applied to lease a \$3500 per month condominium with the stipulation that there would be two occupants at the property, pets were not allowed, and there would be no smoking on the premises. The property was professionally leased and managed by a long-time property manager. It was determined that the property was being listed on AIRBNB for short-term rentals during special events. The property was being advertised using the photos that had appeared in the lease listing by the property manager. It was listed for lease at \$3500 for three-day rentals, up to ten occupants, and smoking and pets were okay.
 1. How do you think this turned out?
 2. How can you avoid these issues?

How can a license holder determine if his or her managed properties are being sub-let for short-term rentals? Google Alerts is a content detection and notification service that sends emails to the user when it finds new results that match the user's search term(s), such as a property address.

Have you ever used Google Alerts?

TREC FAQs

1. **I have a property management company and engage in leasing activity. May I have some of my unlicensed employees solicit business for me?**
No. A leasing agent who solicits a prospect by phone must be licensed.
2. **Does a property manager have to be licensed?**
It depends on what the property manager is doing for the property owner. If the duties include showing or leasing the property for the owner for which the manager is paid, a license is required. A license is also required for any person who controls the acceptance or deposit or rent from a resident of a single-family residential real property unit.
3. **Do I need a license to act as an on-site manager of an apartment complex?**
No, but this exemption only applies to apartments; managers of condominiums or town homes need to be licensed. Note, also, that the "on-site" requirement means that you have an office at the apartment complex, not that the manager has to live there.
4. **When a broker holds money in a property management trust account, how often is the broker required to account for that money?**
The broker must provide a monthly accounting of trust money if there has been any activity in the account.

TREC Case Study 1

The Case of the Check Changer

A broker managed and leased 64 units on two properties for her client. Without telling the broker, the client cancelled the broker's authority to deposit rent directly into the client's bank accounts, as required by their property management agreement. Not knowing what to do and trying to comply with the property management agreement, the broker altered the payee on the checks to her brokerage and deposited the rent into the trust account she had been using for security deposits for that client.

The owner and broker then terminated their relationship, and the broker made an error on the amount of the final invoice, which led to increased charges to the client.

DISCUSSION

1. Given her duties under the property management agreement, did the broker commit a violation?
2. How else could the broker have complied?

TREC Case Study 2

Sticky Fingers

A broker managed three properties for his client. He kept the rent payments for himself, and even after repeated demands, did not turn the money over to his client. He also would not turn over leases or other relevant documents after his client demanded them. He ended up owing more than \$13,000 to his client.

After the client filed a complaint, the broker did not produce documents requested by TREC. The investigation also revealed that he did not keep required records, including trust money documents, for at least four years. Finally, the investigation revealed that the broker authorized a person who was not a real estate license holder to withdraw or transfer money from his trust account (TREC Rule 535.146(c)(7)). The broker claimed he was ill and unable to meet his obligations.

DISCUSSION

What were the violations?

TREC Case Study 3

Don't Steal From Your Client

From May 2007 to July 2014, a sales agent managed property on behalf of her client. She deposited money belonging to her client in an account that was not maintained by her broker. This account also contained money that belonged to the sales agent. The agent did not remit rent in a timely manner to her client. Frequently her client would have to request that the money be sent before the agent sent anything.

Under the property management agreement, the agent was required to obtain prior approval for repairs over \$200. The agent never obtained approval for repairs; however, she charged her client for these repairs. In addition, throughout the years, the agent did not provide a proper accounting each month to her client.

In the summer of 2014, the agent and her client mutually agreed to terminate the agreement. The agent issued her client a check for \$3,885.08 but simultaneously put a stop payment on the check claiming her client owed her \$2,156.38 for various undocumented expenses incurred in 2011 and 2012.

DISCUSSION

Was there a violation of TREC laws or rules?

Each legislative session, there are some bills that affect the property management business in one way or another. See Appendix A for Bills from the 85th Legislative Session that impact property management.

Sales Transactions



Seller's Disclosure

House Bill 890, adopted by the 85th Legislature, amends the Seller's Disclosure to add a general notice that properties may be located near a military installation and may be affected by high noise or installation compatible use zones or other operations. The notice also directs the buyer to a local area study to provide more information.

TREC form OP-H the Seller's Disclosure of Property Condition form was updated to correct the title of the form to "Seller's Disclosure Notice" as found in §5.008 of the Texas Property Code and to add the new language required by HB 890 to be effective September 1, 2017.

TREC Case Study 4

List It Right!

A seller's agent listed a property on MLS. After the initial listing, a contract was executed. The buyers discovered that the lot location was wrong and that the property did not have water as advertised on the MLS. Based on these discoveries, the buyers terminated the contract. Although the seller's agent was aware that the information on the MLS was incorrect, he did not correct the MLS after the contract was terminated.

A second buyer then saw and relied on the information on the MLS and entered into a contract for the property. When the buyer's agent was preparing the contract, she discovered that the listed owner on the appraisal district records differed. When she inquired about the discrepancy, she was told to rely on the information on the MLS because it was correct. After closing on the property, the buyer discovered that the lot he purchased was not the corner lot he believed it to be and that it did not have water.

DISCUSSION

1. What did the seller's agent do wrong?
2. What were the violations, if any?

TREC Case Study 5

Watch Out When You Wear More Than One Hat

A sales agent was a principal of a family-owned construction company that had been hired by a bank to perform internal finishing on a foreclosure property. The agent was present at the property when a potential buyer happened to visit the property, and the agent showed her the property.

The agent offered to represent the buyer and submitted an offer to the bank. The bank rejected the first offer and countered that it would only accept the offer with a \$600,000 construction loan to make improvements. The buyer then contracted with the agent to complete those improvements using the agent's construction company. The sales agent failed to advise the buyer of the potential conflict of interest between his role as an owner of the construction company and his role as the buyer's agent. The agent also failed to advise the buyer that she could seek construction services elsewhere. When problems began to occur, the agent's broker immediately severed interest in the sales transaction, decided not to seek a commission, and allowed the buyer to hire a new agent.

DISCUSSION

1. What should the agent have done?
2. Did the broker act correctly?

TREC Case Study 6

Misleadership

A broker owned a property that he wanted to sell. Because he was having legal and money issues, he put the property in his brother's name. He then "represented" his brother as the seller. The broker claimed to the buyer that the seller was not required to complete a seller's disclosure. He also claimed the seller was his client, but he listed himself as "buyer's agent only" on the contract.

DISCUSSION

What were the violations, if any?

Court Cases

BIRNBAUM V. ATWELL, 2015 TEX. APP. LEXIS 8775, 2015 WL 4967057 (TEX. APP. HOUSTON 1ST DIST. AUG. 20, 2015)

A buyer, who purchased a condominium unit, sued the seller, listing agent, buyer's agent, and the brokerage company after the sale closed for failing disclose numerous water leaks throughout the unit. The trial court granted summary judgment in favor of seller and the broker and the agents without specifying grounds. The buyer appealed and the appellate court affirmed.

The seller originally obtained a penthouse condominium unit in San Antonio in 1999. In 2007, the seller listed it for sale. The buyer made an offer the same day it was listed and entered into a contract using the TREC condominium contract form. The buyer received a seller's disclosure notice.

On the seller's disclosure notice, the seller checked "yes" for the following conditions: Previous Flooding into the Structures, Previous Flooding onto the Property; and Water Penetration. In the explanation section, the seller wrote: "*Unit had some water damage before we bought it. All fixed and no water problems since.*"

The buyer hired a property inspector to inspect the condominium unit. Among other things, the inspector's report observed:

- * Weathering, wear...at interior wood floor at lower floor office at sliding door;
- * Cupping observed at wood floor at kitchen near water heater closet, icemaker unit. This is typically associated with high humidity or moisture;
- * Water damage, staining at carpet near sliding door at lower bedroom from leakage;
- * Water damage observed on ceiling at lower floor office from past roof leakage;
- * Water staining observed at ceiling rear area of living room near a/c vent;
- * Water staining, cracking observed at ceiling corner at lower bedroom; and
- * Signs of water leakage from balcony to interior of bedroom, in need of repairs.

The inspector checked the box denoting "not functioning/needs repair" for the observations concerning water damage to the ceilings and floors.

The buyer is an experienced commercial real estate broker and consulted with an attorney experienced in residential real estate transactions regarding the purchase. The attorney reported:

"[a]bout 2 or 3 years ago litigation was instituted over problems of water leaks in the building. There were questions over whether the water was coming from

the patios and drains and whether it was the condo association or unit owner's responsibility to make repairs. The litigation was settled within the last year and I thought the association was going to resolve the unit owner vs. association responsibility issue for such leaks after the suit was settled. I did not see any clarification of the parties' responsibilities in the materials I received."

The attorney advised the buyer to make further inquiry and "have the seller clarify who is responsible for the repair of such leaks and who has liability from units below the one [the Birnbaums] are buying for possible leaks that have already occurred." The buyer did not approach the listing agent, but did discuss the building's history of water leaks with the manager of the condominium homeowners association, who informed the buyer that the patios had previously leaked and needed repair.

The attorney also advised the buyer to request an extension of the closing date so that the buyer could discuss with the seller the concerns raised by the inspection report. The buyer made the request and the seller agreed to the extension. The buyer determined that it would cost \$160,000 to waterproof the unit and replace the air-conditioning units. As a result, the buyer renegotiated the sales price down to \$2,040,000, a \$160,000 decrease from the price accepted in the contract and a \$360,000 decrease from the seller's original asking price. The buyer conducted all negotiations through the agents. The buyer never questioned the seller about the water leaks or the conflicting statements in the Seller's Disclosure form, which constitutes the only information the buyer obtained from the seller. The parties closed on the sale in late August 2007.

Following the closing, the buyer had the waterproofing and other work done on the patios as well as extensive remodeling work on the interior of the unit, an endeavor that lasted two years. No evidence shows that any water leakage occurred during that period.

Shortly after the buyer moved into the remodeled unit in September 2009, the area experienced a heavy rainstorm. The buyer alleged that water leakage occurred at that time and that numerous other leaks in various locations had occurred since then. An investigation revealed that the roof of the condominium building had been leaking for years, and another penthouse unit owner had experienced similar leaks. The buyer also discovered that water intrusion occurred in the buyer's unit due to the defective window system, which was used throughout the building, as well as problems with the flashing on the stucco columns and the precast concrete used on the building's exterior.

The court noted that the TREC contract is an "as is" clause. The buyer contended, however, that the clause is invalid and unenforceable in this context, where the seller gave assurances of the property's condition.

When considering the enforceability of an "as is" clause in this context, courts consider the totality of the circumstances, including

- * the sophistication of the parties and whether they were represented by counsel;
- * whether the contract was an arm's length transaction;
- * the relative bargaining power of the parties and whether the contractual language was freely negotiated; and
- * whether that language was an important part of the parties' bargain as opposed to being a "boilerplate" provision.

The buyer was trained as an attorney with many years of experience in commercial real-estate transactions. The buyer inspected the property without interference and consulted with an attorney with residential real-estate experience to review pertinent documents and to advise the buyer regarding the proposed purchase. The

buyer also successfully negotiated a reduction in the purchase price to account for the cost of certain repairs. Under these circumstances, lack of sophistication is not a basis for invalidating the “as is” clause.

The buyer did not dispute that the transaction was at arm’s length, but claimed that the clause should be rejected as boilerplate because it was not freely negotiated. The court noted that the seller did not draft the contract, and it was a promulgated form. It also noted that, after conducting an investigation and inspection, the buyer returned to the seller and asked the seller to lower the price so that the seller would assume the expense of the patio weatherproofing. This negotiation bears directly, holding that the clause is not rendered unenforceable.

The parties do not dispute that the listing agent put the buyer on notice that prior water leaks had occurred in the unit. Instead, the buyer complained that the seller misrepresented the recency and frequency of the leaks. The court noted that the seller was “charged only with disclosing such material facts as to put a buyer exercising reasonable diligence on notice of the condition” of the residence. The form expressly required the seller to disclose only her “knowledge of the condition of the property as of the date signed.” The seller disclosed the previous flooding and water penetration in response to the question of whether or not she was aware of any of the specifically enumerated prior or existing conditions. The seller was not required to disclose prior repairs unless she was aware that the repairs were unfinished (as in the case of prior floods or fires, as asked in the form). Knowledge of past repairs does not establish knowledge of a defective condition. Under the circumstances, the seller did not have a duty to make any disclosure she did not make.

The evidence also failed to show that the buyer relied on the seller’s disclosures. Texas courts consistently have concluded that a buyer’s independent inspection precludes a showing of causation and reliance if it reveals to the buyer the information that the seller allegedly failed to disclose.

The evidence showed that the buyer hired an inspector, retained a real estate attorney, and consulted with the condominium association manager, all of whom notified the buyer of water penetration problems in the unit as well as in other locations in the building.

No evidence showed that either the seller or the brokers or agents failed to disclose any knowledge of material facts concerning defective or unrepaired conditions in the condominium unit beyond those the buyer independently discovered before they purchased it.

The buyer further contended that the agents and broker negligently failed to obtain a condominium resale certificate for the unit in compliance with Chapter 82 of the Texas Property Code and that the failure to secure it cost them \$20,000 in damages for landscaping assessments. The buyer contended that the certificate would have provided information about assessments and pending litigation against the condominium.

The buyer’s agent acknowledged she was required to ensure the buyer received the resale certificate, and she admits she failed to do so. This admission, however, does not extinguish the buyer’s duty to read the contents of the documents they sign. The seller and the buyer executed their contract on the TREC form for resale of a residential condominium, which put the buyer on express notice that they were entitled to the resale certificate.

Because the buyer is presumed, as a matter of law, to know that they were entitled to receive a copy of the resale certificate, the broker’s failure to ensure that the buyer received the certificate, standing alone, does not provide a causal link to the buyer’s damages. The buyer does not raise any other evidence that the failure of the broker and agents to obtain a certificate caused their alleged damages. The

court noted that the special assessment for landscaping was made more than two years after the closing and there was no evidence presented that the assessment had accrued before closing.

The buyer also challenge the summary judgment on their breach of fiduciary duty claim against the realtors. The buyer contended the broker, as principal for a brokerage, was not in a proper intermediary relationship with the buyer's agent. The agents and the broker concealed and failed to disclose the details of the water damage, which allegedly caused the buyer to pay over market price for the unit and incur unanticipated repair costs. The breach of fiduciary duty claim failed for the same reason that buyer's fraud and fraudulent inducement claims failed (on notice of the issues with the unit).

The buyer also contended that the buyer's agent breached fiduciary duty by failing to advise the buyer that the "in its present condition" language in the TREC condominium unit resale form rendered it an "as is" agreement. The court noted that this contention disregards the limits of a real estate agent's authority. TREC prohibits licensed real estate agents from

- * practicing law;
- * offering, giving, or attempting to give legal advice, directly or indirectly; or
- * giving advice or opinions about the legal effect of any contracts or other such instruments that may affect the title to real estate. The court also noted the buyers' attorney gave them his own advice about the contract's legal effect concerning this issue.

LUTFAK V. GAINSBOROUGH, 2017 WL 2180716 (TEX. APP.—HOUSTON [1ST DIST.] MAY 18, 2017, NO PET.)

Gilad put his home up for sale in 2010 and Gainsborough became interested in purchasing the home after leasing it from Gilad. During negotiations with Gainsborough, Gilad represented that the townhomes were brand new and that Gilad and his brother built the townhomes. When Gainsborough noted water damage to the home, Gilad said the damage was the result of a burst pipe that had been taken care of, and that the remaining damage was only cosmetic.

In December 2010, Gainsborough and Gilad entered into a standard Texas Real Estate Commission (TREC) One to Four Residential Resale Contract whereby Gainsborough agreed to pay \$484,000 to buy the home "in its present condition." The contract gave Gainsborough the right to inspect the home prior to closing and provided for a ten-day termination option period. Gilad also provided a Seller's Disclosure Notice that disclosed information about the broken pipe and subsequent repairs.

The day after the execution of the contract, an inspection of the home revealed numerous problems. As a result, Gainsborough and Gilad amended their contract, appending the home inspection and entering into an escrow agreement where Gilad agreed to make certain repairs identified in the inspection report within thirty days. After closing, Gilad did not make the repairs, and Gainsborough demanded the money from the escrow. When Gainsborough moved in, he noticed that the home leaked when it rained and discovered several other problems with the home.

Gainsborough later sued Gilad, Gilad's brother, their real estate agent and agency, claiming fraud, breaches of warranty, violations of the Deceptive Trade Practices Act (DTPA), and negligent misrepresentation arising out of the sale of the home. The real estate agent and agency settled prior to trial. After a jury trial, the jury found that Gilad committed fraud, violations of the DTPA, breaches of implied warranties, and negligent misrepresentation when Gilad sold the home to Gainsborough.

The issue in this case is whether the “as is” clause in the TREC Residential Resale Contract precluded Gainsborough’s claims against Gilad for fraud, violations of the DTPA, and negligent misrepresentation and whether Gilad breached the implied warranties of habitability and good workmanship.

The Houston 1st district court of appeals reversed, holding that Gainsborough assumed the responsibility of assessing the property’s condition when he purchased the property “as is.” The court found the amendment and escrow agreement did not supersede the “as is” agreement, but instead, only added the requirement that Gilad make certain repairs to receive the money being held in escrow. The court of appeals further held that Gainsborough was not fraudulently induced to accept the “as is” clause because Gainsborough had an independent inspection performed on the home prior to closing that revealed several areas of concern, yet Gainsborough did not renegotiate the contract to remove the “as is” provision, but instead renegotiated the earnest money contract. Therefore, the court ultimately held that the clause precludes Gainsborough from establishing the elements of causation and reliance with respect to his claims of fraud, DTPA, and negligent misrepresentation.

The court of appeals also reversed as to the implied warranty claims, holding that the evidence was legally insufficient to find support the jury’s finding that Gilad breach the implied warranties of habitability and good workmanship because the unchallenged charge instructed the jury that the warranties could only apply in a sale from a builder to the original purchaser. The evidence only allowed for the inference that Gainsborough was a subsequent purchaser of the property because the evidence proving Gilad to be the original purchaser of the home was undisputed.

Promulgated Contract & Addendum Forms



Summary of Changes to be Made in Spring 2018 to the TREC Contract Forms

Paragraph 2B(2) and 2C [Condominium Contract Only]

Clarified that the seller bears the expense to deliver the condominium documents and the resale certificate to buyer.

Paragraph 2E [for all contracts to mirror Farm and Ranch]

Clarifies that any reservation of mineral interests must be done in a separate addendum.

Paragraph 2F. Reservations [Farm and Ranch Contract Only]

Struck the parenthetical stating that reservations may be included in special provisions (suggesting that reservations are to be addressed only in a properly drafted addendum).

Paragraph 5. Earnest Money

Now provides that the buyer is to deposit the earnest money within 3 (?) days after the effective date. If the third day falls on a Saturday, Sunday or legal holiday, it will be due the next day after that.

Seller may terminate or exercise seller's remedies under Paragraph 15 for buyer's failure to deposit the earnest if seller terminates or exercises remedies before buyer deposits the earnest money.

Paragraph 6A. Title Exceptions

Adds a new subsection (9) for the exception or exclusion regarding mineral rights approved by the Texas Department of Insurance.

Paragraph 6D. Objections [to Title Commitment or Survey].

Now defines the time by which seller is to cure objections as the "Cure Period."

Provides a specific time frame by which the buyer must notify the seller that the buyer will terminate or waive the objections if the objections are not cured within the Cured Period.

Addresses additional time periods for the buyer to object and the seller to cure if a revised commitment, revised survey, or updated exception documents are provided.

Paragraph 20. Federal Tax Requirements

Now clarifies what is meant by "applicable law" and an "affidavit" when seller is a "foreign person."

Last Page, Broker Information, Contract Receipt

"Effective Date" is made a defined term throughout the contracts but is still tied to the final date of acceptance provided on the signature page.

The space for fax numbers was removed from the Broker Information page, and a space for phone numbers for the brokers was added.

Separate receipt boxes were created on the forms for Earnest Money, the Contract and Additional Earnest Money. A space to record the time Earnest Money was delivered to the Title Company was also added.

New Addenda

Hydrostatic Test

Addresses who pays for and is responsible for damages from a hydrostatic test, if the parties agree to have one performed.

Contingency for Appraisal

Addresses the situation where the parties created a contingency to the contract based on the appraisal performed by the lender and termination rights or waiver associated with the contingency.

Condominium Contract & Addendum (review of differences from 1-4 Family Residential Contract)

The Residential Condominium Contract is very similar in structure to the One-to-Four Family Residential Contract (Resale). Both contracts have 24 paragraphs. The titles of each of the paragraphs in the two contracts are the same with two minor exceptions. The provisions of the paragraphs of each of the contracts are essentially the same with adjustments made to the Condominium Contract for issues that are different for condominiums.

This section will review the differences of the Condominium Contract as compared to the One-to-Four Family Residential Contract. Paragraphs that are not

addressed in this review are the same in both contracts. A copy of the Condominium Contract is attached in Appendix B.

Paragraph 2 – Property and Condominium Documents

This paragraph is simply titled “Property” in the One-to-Four Family Residential Contract because there are no condominium documents in the one-to-four family residential transactions.

The property description paragraph is expanded to:

- * properly identify a condominium unit and the associated interest in Common Elements, Limited Common Elements, and Parking Areas;
- * require the seller to deliver a copy of the Condominium Declaration, Bylaws and Rules of the Association (the “Documents”) to the buyer in compliance with state law;
- * require the seller to deliver a Condominium Resale Certificate to the buyer in compliance with state law; and
- * address the potential issue of the condominium association or a member of the condominium association holding a right of first refusal to purchase the unit.

Paragraph 6 – Title Policy

This paragraph is titled “Title Policy and Survey” in the One-to-Four Family Residential Contract (“Survey” is not included in the Condominium Contract). Note the following subparagraphs:

- * subparagraph 6A (4) includes the “Documents” (Declaration, Bylaws and Association Rules) and related assessments as being permitted exceptions to title;
- * subparagraph 6A(8) does not include an option to amend the survey exception in the title insurance policy so as to ensure against discrepancies, conflicts, boundary line problems, encroachments, protrusions or overlapping improvements;
- * subparagraph 6C does not require a survey to be delivered to the buyer or the title company;
- * subparagraph 6D does not contain a disclosure as to whether the condominium unit is or is not subject to membership in a property owners association; and
- * subparagraph 6D does not contain a notice concerning assessments that might be payable to public improvement districts.

Paragraph 12 – Settlement and Other Expenses

This paragraph contains additional subparagraphs:

- * subparagraph 12 A (3) is an additional subparagraph that addresses condominium association transfer fees and allows the allocation for payment of the fees between the buyer and the seller, and
- * subparagraph 12A(4) is an additional subparagraph that requires the buyer to pay any deposits for reserves that may be required at closing by the condominium association in connection with a new owner becoming a part of the condominium association.

Paragraph 13 – Prorations

This paragraph contains additional information:

- * regular condominium assessments are added as an expense to be prorated at closing,
- * any cash reserves from regular condominium assessments for deferred maintenance or capital improvements are not credited to seller, and
- * any special condominium assessment that remains due and unpaid at the time of closing is charged as an obligation of seller.

Paragraph 14 – Casualty Loss

The casualty loss provisions requiring the seller to restore the property to its previous condition prior to closing applies only to damage to the unit that the seller is obligated to repair (as opposed to the condominium association having the obligation to repair). Paragraph 14 also adds conditions that allow the buyer to terminate the contract if common elements are destroyed or damaged prior to closing and the condominium association fails to knowledge timely that repairs will be made at no cost to the buyer. There are timeframes for notices that must be followed in the event of any damage.

Paragraph 22 – Agreement of Parties

The checklist of common addenda does not include the

- * Addendum for Property Subject to Mandatory Membership in a Property Owners Association;
- * Addendum for Reservation of Oil, Gas and Other Minerals; or the
- * Condominium Resale Certificate.

Condominium Documents

Condominium Resale Certificate

Section 82.157 of the Texas Uniform Condominium Act requires that a Condominium Resale Certificate be provided to a buyer of a condominium unit if the seller of the unit is not the declarant (original developer of the condominium regime). If the seller of the condominium unit is the declarant, §82.152 of the Texas Uniform Condominium Act requires that a Condominium Information Statement be provided to the buyer. A Condominium Resale Certificate and a Condominium Information Statement both provide similar (but, some slightly different) information to the buyer.

The form of Condominium Resale Certificate promulgated by TREC complies with the requirements of the Texas Uniform Condominium Act. In addition to the Condominium Resale Certificate, the seller must provide the buyer with a current copy of the following documents:

- * Declaration,
- * Bylaws, and
- * Association rules (if any)

The Texas Uniform Condominium Act provides that if the buyer did not receive the required documents and the Condominium Resale Certificate prior to signing the purchase contract, the buyer may cancel the contract before the sixth day after the date the buyer receives the required documents and the Condominium Resale Certificate.

Condominium Information Statement

The Condominium Information Statement may be completed only by the condominium association and must be signed and dated by an officer or authorized agent of the condominium association. The Condominium Information Statement must not have been prepared more than three months before the date it is delivered to the buyer.

TREC Case Study 7

The Back-up Contract

A broker was selling her daughter's home. She accepted a back-up contract before the first contract was terminated and before the closing date on the first contract. The broker did not tell the buyer's agent on the first contract that she closed the transaction with the back-up contract. The parties settled the contract dispute.

DISCUSSION

1. Does it matter that it was family involved?
2. Does it matter that the parties settled the contract dispute?

TREC Case Study 8

Watch Those Promises

A broker represented a buyer in the purchase of a condominium. The broker submitted a repair amendment to the seller that stated, "Completely replace roof including removing old shingles and felt and replace any damaged decking." The seller executed the amendment as submitted by the broker, although only the HOA and not the seller had the authority to perform the repairs. The HOA confirmed that it did not intend to repair the roof at that time; however, the buyer's option period expired, and it cost the buyer \$1,449.20 to cancel the transaction.

DISCUSSION

What was the broker's responsibility?

Farm & Ranch (review of differences from 1-4 residential contract)

The Farm and Ranch Contract is structurally similar to the One-to-Four Family Residential Contract (Resale). There is a variety of paragraphs with additional obligations and disclosures in the Farm and Ranch Contract.

This section will review the differences between the Farm and Ranch Contract and the One-to-Four Family Contract. Paragraphs not addressed in this review are the same in both contracts. A copy of the Farm and Ranch Contract is attached in Appendix B.

Paragraph 2 Property

2A defines "land" to include "all rights, privileges, and appurtenances pertaining thereto, including but not limited to: water rights, claims, permits, strips and gores, easements, and cooperative or association memberships."

These rights are not presumed in a residential transaction.

DISCUSSION

1. What water rights might convey? Surface, riparian, or groundwater?
2. What are strips and gores?
3. How do you determine what easements might exist on the property?
4. A prudent broker would recommend the buyer have a real estate attorney review the commitment.
5. Should an agent consider that the sale might consist of multiple PID#, review all tax records, and ensure correct number of acres included in the sale?

Paragraph 2.B. (1) Farm and Ranch Improvements

The following permanently installed and built-in items, if any: windmills, tanks, barns, pens, fences, gates, sheds, outbuildings, and corrals.

These items are added to remind the seller and buyer of the items that are intended to convey.

What else might be a conveyance on a farm or ranch transaction that is not included in this paragraph? One answer: Livestock.

Paragraph 2. C. (1) Farm and Ranch Accessories

The following described related accessories: (check boxes of conveyed accessories) X portable buildings X hunting blinds X game feeders X livestock feeders and troughs X irrigation equipment X fuel tanks X submersible pumps X pressure tanks X corrals X gates X chutes X other:_____.

These accessories would be somewhat common in a farm and ranch sale, remind the seller to check those items which are remaining with the property after the closing and be sure the buyer understands ONLY those items checked are intended to stay. If there is Farm Equipment: Tractors/Trailers/ATVs to convey, the seller should be asked at the time of listing if there is money owed on the equipment and if it is to be conveyed clear title. A bill of sale should be procured for the buyer.

Paragraph 2. D. Crops:

Unless otherwise agreed in writing, Seller has the right to harvest all growing crops until delivery of possession of the Property.

Keep in mind that if the buyer and seller agree for the crops to be harvested for benefit of a tenant or the buyer prior to closing, those agreements must be in writing.

If an agent/broker does not know what a "crop" is, the agent should strongly consider referring to a Farm/Ranch Agent/Broker or seek guidance from a Farm/Ranch Agent/Broker to protect the client's interest.

Often in farm and ranch sales, leases and easements are by oral agreement, which means nothing is in writing. Working with the seller at the time of listing the property to establish what easements and leases may exist will be helpful when an interested buyer is found.

2. F. Reservations

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

Who can determine which minerals will convey with the property? Answer: ONLY A LANDMAN OR AN OIL AND GAS ATTORNEY. Having a real estate license does NOT give the license holder the knowledge or authority for determining which mineral rights convey with the property.

The TREC contract conveys all rights owned by the seller to the buyer unless some of those rights have been severed. To be specific, if grandpa sold off the minerals years ago, the minerals will NOT convey to the buyer because the current owner, his grandson, does not own them. If however, grandpa did not sell the minerals, they will convey, and the grandson may think he knows what conveys. The only way to be sure is to consult a landman or oil and gas attorney.

Paragraph 3 Sales Price

3 D. The Sales Price

X will X will not be adjusted based on the survey required by Paragraph 6C. If the Sales Price is adjusted, the Sales Price will be calculated on the basis of \$____ per acre. If the Sales Price is adjusted by more than 10%, either party may terminate this contract by providing written notice to the other party within days after the terminating party receives the survey. If neither party terminates this contract or if the variance is 10% or less, the adjustment will be made to the amount in X 3A X 3B X proportionately to 3A and 3B.

The parties should be helped to understand that if a land sale is occurring and the property has not had a survey in many years, the possibility of a discrepancy in area is very high. There could be more or less property than the seller believes is being conveyed. At the time of listing, a broker should request a copy of any existing survey(s) of the property and should work with the seller to see if the survey is for the entire property or only parts of the property.

How could a seller lessen the opportunity for a discrepancy in a survey? If a Home/Barn or other structures are on the property, the price per acre without the value of any improvements will have to be determined.

Paragraph 6 Title Policy and Survey

Paragraph 6. C. 4. No survey is required.

This is not a choice in a residential transaction.

6 E. Exception Documents

Prior to the execution of the contract, Seller has provided Buyer with copies of the Exception Documents listed below or on the attached exhibit. Matters reflected in the Exception Documents listed below or on the attached exhibit will be permitted exceptions in the Title Insurance Policy and will not be a basis for objection to title:

Document	Date	Recording Reference
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A prudent broker will always review any title insurance commitment or title insurance policy from a previous sale that is made available and any title insurance commitment created for a proposed sale to see if there are references to exceptions. Exceptions must be listed in this contract with not only the document name but also the date and recording references.

What is an example of an exception document?

How might these be listed on a title insurance commitment? On the title insurance commitment, where would you look for these exceptions?

This is another time to have a real estate attorney review what the buyer has received from the title company.

6 F. Surface Leases

Prior to the execution of the contract, Seller has provided Buyer with copies of written leases and given notice of oral leases (Leases) listed below or on the attached exhibit. The following Leases will be permitted exceptions in the Title Insurance Policy and will not be a basis for objection to title: _____.

Leases for grazing or hunting or other leases may or may not be in writing in a land transaction, the parties should, as much as is practical, put in writing what the terms of a lease have been.

6 G. (7) Texas Agricultural Development District

The Property X is X is not located in a Texas Agricultural Development District. For additional information, contact the Texas Department of Agriculture.

On the website <https://texasagriculture.gov>, go to the search function and search "Agricultural Development District" for a list of Agricultural Development Districts. At the time of this writing, no formation of an Agricultural District has been reported to the Texas Department of Agriculture.

This is not referring to the County's Appraisal District "Special Valuations accessed for properties"

i.e., Agriculture, Wildlife, etc.

Paragraph 7 Property Condition

7. H. Seller's Disclosures

Except as otherwise disclosed in this contract, Seller has no knowledge of the following: (1) any flooding of the Property which has had a material adverse effect on the use of the Property; (2) any pending or threatened litigation, condemnation, or special assessment affecting the Property; (3) any environmental hazards that materially and adversely affect the Property; (4) any dumpsite, landfill, or underground tanks or containers now or previously located on the Property; (5) any wetlands, as defined by federal or state law or regulation, affecting the Property; or (6) any threatened or endangered species or their habitat affecting the Property.

A seller signing this contract is attesting that he or she has no knowledge of these items named in this paragraph.

At the time of listing, this contract form should be given to the seller to make sure he or she has the time to consider this paragraph and think about whether or not any of these conditions exist on or with the property.

It is always best that the seller and listing broker/agent tour the entire property before listing. Then before writing an offer, the seller and listing broker/agent AND the buyer and buyer broker/agent tour the property for 100 percent visual inspection. The seller might have forgotten about the old tractor still leaking oil in the back pasture. The buyer will want to make sure he or she notices that before closing. The buyer's agent recommends all inspections: environmental, oak wilt evaluation, septic, water test (if there's a well), and any other inspections deemed appropriate.

Paragraph 13 Prorations and Rollback Taxes

Subparagraph 13 B. 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.

Q&A

1. What Qualifies as a Change of Use?

A change of use is a physical change. The property owner stops using the land for agricultural purposes.

2. What is a rollback tax?

The ability of the property taxing entities to go back 5 years after a change

in use and collect property taxes that were not paid based on the agricultural exemption. The Comptroller of Public Accounts for Texas has a manual at <https://comptroller.texas.gov>. Search for “Manual for the Appraisal of Agricultural Land.”

3. Should a broker attempt to use this tool to calculate the amount of taxes which MIGHT be owed in a rollback?

No. The buyer should consult with the local property tax appraisal district about this issue. The buyer might receive a different answer than when he or she lived in a different county. This special valuation for agricultural or wildlife runs with the owner and not the land; therefore, a change in ownership will require the new owner to re-apply for the exemption status, and there is no guarantees that a special valuation will be granted to the new owner.

4. How could a buyer’s agent advise a buyer about these special valuations?

The agent should highly recommend that the buyer consult the county appraisal district during the option period. The listing broker/agent should request, at the time of listing, that the seller obtain a letter from the appraisal district stating which usage is qualifying him or her for the agricultural valuation or verifying the list of qualifying wildlife management practices. The buyer’s broker/agent should request this letter during the option period.

Page 9 Broker Information and Agreement for Payment of Broker’s Fees

Upon closing of the sale by Seller to Buyer of the Property described in the contract to which this fee agreement is attached: (a) X Seller X Buyer will pay Listing/Principal Broker X a cash fee of \$____ or X % of the total Sales Price; and (b) X Seller X Buyer will pay Other Broker X a cash fee of \$____ or X % of the total Sales Price. Seller/Buyer authorizes and directs Escrow Agent to pay the brokers from the proceeds at closing. Brokers’ fees are negotiable. Brokers’ fees or the sharing of fees between brokers are not fixed, controlled, recommended, suggested or maintained by the Texas Real Estate Commission.

Signature lines for Seller and Buyer

The above information is completed and used only if there is NO written commission agreement. For example, if there is NO listing agreement or NO buyer representation agreement that describes the manner in which a broker may earn a commission for this transaction, the information is provided.

Do not sign if there is a separate written agreement for payment of Brokers’ fees.

Broker Information and Agreement for Payment of Brokers’ Fees

The Farm and Ranch contract is the only contract that includes the paragraph on agreement for payment of Brokers’ Fees. This page is signed by the Seller and Buyer in the Farm and Ranch contract.

Q&A

1. Should I fill this out so I can get paid my commission from the seller?

Perhaps no. This is used only when there is no listing agreement or other type of commission agreement signed. This is often misunderstood and agents have a tendency to fill out all of this information even though there is a valid listing agreement.

2. Could that cause the seller to pay a commission twice?

Only a judge would decide that (after the broker spends a lot of money on legal fees).

MLS System Differences

There are a couple of other differences between farm and ranch and one-to-four family worth mentioning. The MLS systems usually create a category for farm and

ranch listings that are tied to a particular number of acres. For instance one MLS requires any property over 10 acres to be put in the farm and ranch part of that MLS. Farm and Ranch, for contract purposes, is not tied to the number of acres but rather to the use and the improvements. Therefore, the use of TREC form # 25-11 is not determined by acreage alone.

If this is a “gentleman farm or ranch,” small acreage with a home that may qualify for an agricultural exemption, the agent should be aware of the possibility that a mortgage lender might not understand or allow a property to be maintained in agricultural status. The lender may also require the use of the one-to-four family contract even if the property has farm and ranch improvements. Lenders may also have limits on how much acreage they will lend, or the value of the land versus the value of the improvements may become an issue with the lender. Brokers and sales agents should ask all of these questions of any lender when their buyer is purchasing an “acreage” property.

Court Cases

CHRISTERSON V. SPEER (TEX. APP. HOUSTON 1ST DIST. APR. 27, 2017)

This appeal is from a summary judgment, concerning whether the statute of limitations bars the buyers’ claims for fraud and deceptive trade practices brought against the sellers who financed the buyers’ purchase of their home.

The buyers bought the home from the sellers in 2000. The sellers loaned the buyers \$250,000 to finance the purchase. In 2014, the sellers notified the buyers that they owed outstanding interest on the note and began foreclosure proceedings. Before the foreclosure took place, the buyers sold the home, and they used the proceeds to pay off the outstanding debt. The buyers sued the sellers for fraud, breach of contract, and violations of the Texas Deceptive Trade Practices Act, the federal Truth in Lending Act, and the federal Racketeer Influenced and Corrupt Organizations Act. The buyers also named the seller’s son who acted as the real estate broker in the sale and the seller’s attorney.

A licensed real estate broker and agent, agreed to help his parents sell their home and he met the ultimate buyers. The buyers told the agent that they could pay \$1450 per month for 30 years. The sellers responded that they would try to arrange financing accordingly. The parties agreed on a sales price of \$275,000, with seller financing of \$250,000 (8 percent interest). The broker drafted the contract on the TREC forms and used the seller financing addendum.

The seller financing addendum stated:

“Note shall be payable, [i]n monthly installments of \$1450 including interest beginning 30 days after the date of the Note and continuing at monthly intervals thereafter for 30 years when the entire balance of the Note shall be due and payable.”

A \$250,000 note at 8 percent interest per annum is not discharged with monthly payments of \$1450 over 30 years. Under the “special provisions” section, the broker wrote

“NOTICE: The Seller Financed Note will negatively amortize based on a monthly payment of \$1450.”

The deed of trust, executed on May 13, 2000, provided for monthly payments of \$1450 and interim catch-up payments every 10 years:

- A. 359 equal consecutive payments of \$1450 for 359 months;
- B. A payment due on July 1, 2010 for all accrued, unpaid interest to date “together with sufficient payment of principal to reduce the unpaid principal balance on such date to that which would have existed had this note been amortized with timely full amortization monthly installments of \$1834.41 per month;”

- C. A payment due on July 1, 2020 for all accrued, unpaid interest to date, “together with sufficient payment of principal to reduce the unpaid principal balance on such date to that which would have existed had this note been amortized with timely full amortization monthly installments of \$1834.41 per month.”
- D. All unpaid, accrued interest and unpaid principal shall be due and payable on the final maturity date of April 1, 2030.

Following the closing, the buyer made timely payments. In August of 2013, the sellers notified the buyers that a catch-up payment of approximately \$46,000 in unpaid principal and interest was due on the loan. The buyers did not pay that amount, but continued to make the regular \$1450 monthly payments.

In January of 2014, the sellers began refusing the buyers’ monthly payments and initiated foreclosure proceedings. The buyers sold the home before foreclosure could occur and with the proceeds from the sale, they paid the amount outstanding on the loan.

The buyers allege that the sellers and broker represented that \$1450 would cover the accrued interest and principal payments on the loan when in fact it did not, thus triggering the catch-up payments.

The sellers moved for dismissal based on the statute of limitations (2-4 for all claims alleged). The sellers claimed that limitations began to run at the time of closing, when the documents were signed. The trial court granted the sellers’ motion for summary judgment based on the statute of limitations.

The appellate court noted that the loan documents, signed in May 2000, disclose the fact that \$1450 in monthly payments does not fully satisfy the loan. The documents obligate the buyers to make three additional catch-up payments in 2010 and 2020, respectively. Therefore, the buyers were charged, as a matter of law, with knowing and understanding the contents of the deed and other closing documents upon their signing. The loan document disclosure negated application of the discovery rule in this case as a basis for deferring accrual of the limitations period beyond the closing date. The demand for payment from the sellers did not revive the accrual date. The acceptance of payments under the loan did not constitute a continuing tort (assuming one existed).

The court affirmed the trial court’s grant of summary judgment favoring the sellers.

Hot Topics



Unescorted Access to Vacant Rental Property

TREC Rule 535.4 (d) states that a license holder may permit a prospective tenant unescorted access to view a property available for rent or lease only if the

- * property is vacant, meaning no person lives at, and no personal property except property intended to remain or convey is stored at the property;
- * license holder employs a method to control access and verify the identity of the prospective tenant; and
- * property owner has signed a written consent that sets out in bold print in at least 12-point font that
 - » the property owner is aware that unescorted access may occur, and
 - » specifies whether the broker enabling unescorted access or the property owner will be responsible for any damage that results from such unescorted access.

There has been some initial confusion about this new rule so the following are some key points to understand.

1. Allowing unescorted access is not mandatory and an owner or property manager does not have to allow it. This purely voluntary practice was requested by experienced managers.
2. This only applies to vacant property offered for lease and not residential “for sale” listings.
3. The property owner must give written permission authorizing the property manager to allow controlled unescorted access by identified parties to vacant lease property, and the written permission must indicate who will be responsible for any damages to the property due to the unescorted access.
4. Who is responsible for damages is a negotiable item between the property manager and the property owner.

ADA Compliant Websites

Places of public accommodation must make their places of business available to all members of the public. In the 1990’s, the Internet was a fad, and there is (currently) no law that says the Internet must be accessible. There is some talk that the Department of Justice (DOJ) will present a final rule in 2018 (at the earliest), that the Internet (and therefore real estate websites) must be accessible, although there is still conversation going on regarding physical structures versus virtual structures.

The Department of Justice, the agency responsible for enforcing ADA compliance, and has taken the broadest position that all websites should be ADA compliant under Title III, the section of the ADA that applies to businesses.

Brokers could consider a few things that could help limit their risk:

- * contact website provider and inquire about ADA accessibility,
- * review Web Content Accessibility Guidelines 2.0, the current widely accepted website baseline,
- * usually DOJ orders give an 18-month window for compliance; consider starting with changes that have the greatest impact on accessibility,
- * consider accessibility when adding new website content or features,
- * educate relevant staff to monitor the website for necessary changes or remediation, and
- * consider adding a feedback form for website users to report accessibility issues.

Foreign Investment in Real Property Tax Act (FIRPTA)

The Foreign Investment in Real Property Tax Act (“FIRPTA”) was passed by Congress in 1980, at a time when foreign investment in U.S. real estate was surging to an all-time high. Congress wanted to ensure that foreign investors in U.S. real estate, who might not otherwise be part of the U.S. tax system, paid a tax on their sales profits of these real estate holdings.

FIRPTA applies only to sellers who are deemed “foreign persons” under the Internal Revenue Code and its regulations.

Some important definitions per the Internal Revenue Code:

- A. A “foreign person” is defined as any of the following:
 - 1. A nonresident alien individual
 - 2. Certain foreign corporations (ones that have not elected to be treated under §897(i) of the Internal Revenue Code as a US domestic corporation)
 - 3. A foreign partnership, trust or estate
- B. A nonresident alien is an individual who is not a U.S. Citizen or a resident alien.
- C. A U.S. Citizen means
 - 1. An individual born in the United States,
 - 2. An individual whose parent is a U.S. citizen,
 - 3. A former alien who has been naturalized as a U.S. citizen,
 - 4. An individual born in Puerto Rico,
 - 5. An individual born in Guam, or
 - 6. An individual born in the U.S. Virgin Islands.
- D. A resident alien is an individual that is not a U.S. citizen and who holds either a valid “green card” (an alien registration card, Form I-551) or meets the “substantial presence test” for the calendar year.

Comment: It is incorrect that if you are not a U.S. citizen but you hold a U.S. Taxpayer ID (TIN) number, that you are not a foreign person and not subject to FIRPTA. This is not necessarily true. You must also be a resident alien holding a green card, as defined above.

- E. To meet the “substantial presence test,” you must be physically present in the United States (U.S.) on at least:
 - 1. 31 days during the current year, and
 - 2. 183 days during the 3-year period that includes the current year and the 2 years immediately before that, counting:
 - a. All the days you were present in the current year, and
 - b. 1/3 of the days you were present in the first year before the current year, and
 - c. 1/6 of the days you were present in the second year before the current year.

FIRPTA imposes a tax on foreign persons who sell real estate equal to 15 percent of the gross sales price. The major exceptions to this rate and this tax are:

- * If the sales price is \$300,000 or less, and the buyer is going to use the property as the buyer’s residence, there is no tax – the parties are exempt from FIRPTA.
- * If the sales price is more than \$300,000, but does not exceed \$1 million, and the buyer is going to use the property as the buyer’s residence, the tax is 10 percent of the gross sales price.

FIRPTA requires the buyer to withhold this tax from the seller at closing and remit it to the IRS as a tax, along with certain tax forms (Form 8288 and 8288-A) that must be filled out and signed by the buyers. Many title companies and escrow agents perceive they have liability to the IRS if they fail to “capture” this tax at the closing. Therefore, most title companies and escrow agents will police and ensure compliance with FIRPTA, deduct the tax from the seller on the closing statement, and provide the necessary IRS forms and otherwise ensure the payment and forms are sent to the IRS.

In most closings, the seller is not a foreign person. The way a buyer obtains satisfaction and confirmation of this fact is by delivery of a Certificate of Non-Foreign Status (sometimes also referred to as a non-foreign affidavit) at closing. The delivery

of this certificate (or, if not possible to deliver because seller is a foreign person, the withholding of the FIRPTA tax by the buyer) is required pursuant to paragraph 20 of the TREC One-to-Four Family Resale contract form, with similar provisions in all other TREC contract forms. Most title insurance companies produce this Certificate of Non-Foreign Status for the seller to sign as part of the closing package.

It is important to note that while payment of the tax is owed by the seller, the liability for the collection is clearly and strictly on the buyer. A buyer who fails to collect and remit this tax through the title company could have liability to the IRS.

If an agent suspects or discovers that his or her seller is a foreign person under Internal Revenue Service guidelines, the seller should be informed of possible FIRPTA tax implications upon closing and instruct the seller to contact a CPA or tax advisor for further details.

TREC Case Study 9

Empty Threat

Two sales agents were negotiating a sale. The property was under contract. The option period passed, and a dispute arose about earnest money. After some emails and angry phone calls from the buyer's agent, the buyer's agent sent the seller's agent an email that read,

"This email of yours will cause your license to be taken away, and you will never be able to sell real estate again. Plus I'll make sure you can't sell this house, either."

The seller's agent testified that he took this statement as a threat that the buyer's agent could possibly vandalize the property or sabotage the sale.

DISCUSSION

1. Should the buyer's agent have sent this email?
2. Is a buyer's agent ever justified in sending such an email?

Appendix A

Bills from the 85th Legislative Session that Impact Property Management

House Bill 240

Relating to the occurrence, on certain premises, of certain activities that may constitute a common nuisance. Effective Date: September 1, 2017, only to a cause of action that accrues on or after September 1, 2017. A cause of action that accrues before September 1, 2017 is governed by the law applicable to the cause of action immediately before September 1, 2017, and that law is continued in effect for that purpose.

Adds Section 125.0017; amends Section 125.004 of the Civil Practice & Remedies Code

Provides for law enforcement agencies to send mailed notices of arrests to landowners leasing property to persons operating a massage establishment, of the occurrence of specified illegal activities in the list of “common nuisances” in Section 125.0015(a), Civil Practice and Remedies Code. Notice of the arrest is prima facie evidence that the landowner knowingly tolerated the illegal activity, and with respect to notices of arrests involving certain offenses, is also notice that the landowner did not make a reasonable attempt to abate the illegal activity. This evidence may be used in lawsuits against the landowner that the landowner is maintaining a “common nuisance.”

House Bill 2359

Relating to common nuisances, Effective Date: September 1, 2017

Amends Sections 125.0015(a) and 125.046(a) of the Civil Practice & Remedies Code

Adds criminal trespass (Section 30.05, Penal Code), disorderly conduct (Section 42.01, Penal Code), arson (Section 28.02, Penal Code), criminal mischief (Section 28.03, Penal Code) that causes a pecuniary loss of \$500 or more, and a graffiti offense (Section 28.08, Penal Code) to the list of activities constituting a “common nuisance” committed by a person who maintains a place to which people habitually go for the stated activity, and who knowingly tolerates the activity and fails to make reasonable attempts to abate the activity. Adds maintaining a vacant lot, vacant or abandoned building, to the current sole activity of maintaining a multiunit residential property that is a common nuisance, as activities about which a court may, on its own motion or on the motion of any party, order the appointment of a receiver to manage the property or render any other order allowed by law as necessary to abate as a nuisance.

House Bill 3879

Relating to non-lawyer representation in an appeal of an eviction suit, Effective Date: September 1, 2017

Amends Property Code, Section 24.011 In an appeal of an eviction suit for non-payment of rent, permits an owner of a multifamily residential property to be represented by an authorized agent who need not be an attorney, or, if the owner is a corporation or other entity, by an employee, owner, officer, or partner of the landlord who need not be an attorney.

House Bill 1099

Relating to a residential tenant's right to summon police or other emergency assistance, Effective Date: September 1, 2017

Amends Property Code, Section 92.015

Broadens protection of a residential tenant's right to request emergency assistance if the tenant has a reasonable belief that a person requires intervention or emergency assistance (previously the tenant's protected right to request assistance was limited to a response to family violence). Landlord may not prohibit, limit, or impose penalties on a tenant who exercises its rights. Any provision in a lease entered into on or after the effective date of this legislation that waives tenant's right to request emergency assistance shall be void.

House Bill 2552

Relating to measures to address and deter certain criminal or other unlawful activity, including trafficking of persons, sexual offenses, prostitution, and activity that may constitute a public nuisance; increasing criminal penalties; creating a criminal offense, Effective Date: September 1, 2017

Adds Property Code, Section 93.013; amends Business & Commerce Code, Section 17.46; amends various sections of Civil Practice and Remedies Code, Chapter 125; adds Civil Practice and Remedies Code, Section 125.0017 and Section 125.0025; adds Education Code, Section 11.066; amends Government Code, Section 411.042; adds Health and Safety Code, Sections 241.011 and 245.025; amends Occupations Code, Section 1602.354; adds Occupations Code, Section 1602.408; amends Penal Code, Sections 20A.02, 21.16, and 22.01; adds Penal Code, Section 21.18

Adds a new section to Chapter 93 of the Texas Property Code that applies to leases entered into or renewed on or after the date of the act. Provides that a tenant's right of possession terminates if the tenant uses or allows premises to be used for various prostitution or human trafficking crimes. If a landlord "reasonably believes" that the tenant is using the premises for such a prohibited purpose, then the landlord may file a forcible detainer suit under Chapter 24 of the Property Code and seek unpaid rent, including rent for any period of occupancy after termination of the tenant's right of possession. For such a forcible detainer, the landlord is not required to give a notice of eviction or termination before giving the notice to vacate and the landlord is not required to give more than three days' notice to vacate before filing suit, notwithstanding requirements of laws related to notices to vacate (Section 24.005), termination of a lease (Section 91.001), any other law, or any other lease provision. Provides that a pending suit by the attorney general or by a district, county or city attorney for common nuisance related to the prohibited activity is prima facie evidence that the tenant's right of possession has terminated. States that a final, non-appealable determination by a court that a common nuisance is being maintained on the premises creates an irrebuttable presumption that the tenant's right of possession has terminated.

Senate Bill 920

Relating to access to a residence or former residence to retrieve personal property, including access based on danger of family violence, Effective Date: September 1, 2017

Amends Property Code, Sections 24A.001, 24A.002, 24A.003, 24A.004, 24A.005, and 24A.006; adds Property Code, Section 24A.0021

Broadens an applicant's right to apply to the justice court for an order permitting entry to a former residence to retrieve personal property if the applicant is unable to enter the residence because of a clear and present danger of family violence to the

applicant or the applicant's dependent. Expands information that may be retrieved to include copies of electronic records containing legal or financial documents. Permits a justice of the peace to issue a temporary writ (not to exceed five (5) days) to retrieve property at an ex parte hearing if certain statutory conditions for permitting the applicant to access to the premises are satisfied, and if the current occupant poses a clear and present danger of family violence to the applicant or the applicant's dependent, and if the personal harm to be suffered by the applicant or the applicant's dependent will be immediate and irreparable if the application is not granted. Permits the justice of the peace to waive the bond requirements for the temporary writ. Permits the justice of the peace to recess the ex parte hearing in order to call the current occupant and inform the occupant that he or she may attend the hearing or bring the personal property described in the application to the court.

Senate Bill 873

Relating to the authority and liability of owners and managers of apartment houses, manufactured home rental communities, condominiums, and multiple use facilities in charging tenants for submetered and non-submetered master metered water and wastewater services, Effective date: immediate

Amends Water Code, Chapter 13, Sections 13.501, 13.503, 13.5031, and 13.505

Defines "condominium manager," "utility costs," "utility service costs," and "overcharge."

Revises definition of "owner" to not include the manager unless manager is specifically identified as the landlord in the lease. Adds provision in sub-metering and non-submetering rules in the Water Code to clarify that an apartment house owner, condominium manager, manufactured home rental community owner, or multiple use facility owner may charge a fee relating to upkeep or management of chilled water, boiler, heating, ventilation, air conditioning, or other building system, or any other amount that is unrelated to utility costs. Authorizes a person claiming a violation of a Public Utility Commission of Texas (PUC) rule regarding utility costs to file a complaint with the PUC. Grants exclusive jurisdiction to the PUC for violations under Subchapter M. Requires the PUC to establish an online and telephone formal complaint and hearing system. Revises tenant remedies to repayment of any overcharge and allows the PUC to assess an administrative penalty for overcharge violations by owners.

Senate Bill 712

Relating to the duration of certain protective orders against family violence, Effective Date: September 1, 2017

Amends Family Code Section 85.025 (a-1)

Allows the court to issue a protective order that exceeds two years if the person who is the subject of the protective order committed an act constituting a felony offense involving family violence regardless of whether the person has been charged with or convicted of the offense.

Senate Bill 560

Relating to surcharges imposed for the use of a credit card, Effective Date: September 1, 2017

Transfers and amends Section 339.001, Finance Code to Chapter 604A, Business & Commerce Code, redesigns it as Section 604A.0021, Business & Commerce Code

A seller of goods and services, except for a state or local government entity, may not charge extra when a consumer pays with a credit or debit card than is charged when payment is made by cash, check or other similar means of payment.

Senate Bill 451

Relating to regulation of short term rentals by municipalities and counties, Effective Date September 1, 2017

Amends Local Government Code, Chapter 250

Adds a new section 250.008 that prohibits a municipality from adopting or enforcing a local law that restricts the use of property as a short-term rental except as authorized by other law if applied in the same manner as other similar property for purposes of health, fire, safety, sanitation, maintenance, occupancy, noise and zoning. Municipalities can enact laws to prohibit use of short-term rentals for housing sex offenders, sober living homes, selling illegal drugs or alcohol or operating a sexually oriented business.

Senate Bill 762

Relating to the prosecution of offenses involving cruelty to animals; increasing the penalty, Effective Date September 1, 2017

Amends Penal Code Section 42.092

Makes certain acts of animal cruelty a third degree felony if there have been previous convictions of cruelty to animals.

A property manager is a license holder charged with operating a real estate property, for a fee, when the landlord is unable to attend personally to such details or is not interested in doing so. The property manager has two important responsibilities: preservation of the value of the property and the ability to enforce the tenants' responsibilities included in the terms and conditions of the lease. There are many ways that a property manager, can achieve those goals, and the property manager should discuss those with the landlord up front.

Appendix B



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)
NOTICE: Not For Use Where Seller Owns Fee Simple Title To Land Beneath Unit
RESIDENTIAL CONDOMINIUM CONTRACT (RESALE)

11-13-2017



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 AND CONDOMINIUM DOCUMENTS:

A. The Condominium Unit, improvements and accessories described below are collectively referred to as the "Property".

(1) CONDOMINIUM UNIT: Unit _____, in Building _____, of _____, a condominium project, located at _____

(address/zip code), City of _____, County of _____

Texas, described in the Condominium Declaration and Plat and any amendments thereto of record in said County; together with such Unit's undivided interest in the Common Elements designated by the Declaration, including those areas reserved as Limited Common Elements appurtenant to the Unit and such other rights to use the Common Elements which have been specifically assigned to the Unit in any other manner. Parking areas assigned to the Unit are: _____

(2) IMPROVEMENTS: All 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, shrubbery, landscaping, outdoor cooking equipment, and all other property owned by Seller and attached to the above described Condominium Unit.

(3) 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, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and accessories.

(4) EXCLUSIONS: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession: _____

B. The Declaration, Bylaws and any Rules of the Association are called "Documents". (Check one box only):

☐ (1) Buyer has received a copy of the Documents. Buyer is advised to read the Documents before signing the contract.

☐ (2) Buyer has not received a copy of the Documents. Seller, at Seller's expense, shall deliver the Documents to Buyer within _____ days after the Effective Date ~~[effective date]~~ of the contract. Buyer may cancel the contract before the sixth day after Buyer receives the Documents by hand-delivering or mailing written notice of cancellation to Seller by certified United States mail, return receipt requested. If Buyer cancels the contract pursuant to this paragraph, the contract will terminate and the earnest money will be refunded to Buyer.

C. The Resale Certificate from the condominium owners association (the Association) is called the "Certificate". The Certificate must be in a form promulgated by TREC or required by the parties. The Certificate must have been prepared, at Seller's expense, no more than 3 months before the date it is delivered to Buyer and must contain at a minimum the information required by Section 82.157, Texas Property Code.

(Check one box only):

☐ (1) Buyer has received the Certificate.

☐ (2) Buyer has not received the Certificate. Seller shall deliver the Certificate to Buyer within _____ days after the Effective Date ~~[effective date]~~ of the contract. Buyer may cancel the contract before the sixth day after the date Buyer receives the Certificate by hand-delivering or mailing written notice of cancellation to Seller by certified United States mail, return receipt requested. If Buyer cancels the contract pursuant to this paragraph, the contract will terminate and the earnest money will be refunded to Buyer.

☐ (3) Buyer has received Seller's affidavit that Seller requested information from the Association concerning its financial condition as required by the Texas Property Code, and that the Association did not provide a Certificate or information required in the Certificate. Buyer and Seller agree to waive the requirement to furnish the Certificate.

D. If the Documents reveal that the Property is subject to a right of refusal under which the Association or a member of the Association may purchase the Property, the Effective Date ~~[effective date]~~ shall be amended to the date that Buyer receives a copy of the Association's certification that: (i) Seller has complied with the requirements under the right of refusal; and (ii) all persons who may exercise the right of refusal have not exercised or have waived the right to buy the Property. If Buyer does not receive the Association's certification within _____ days after the Effective Date ~~[effective date]~~ or if the right of

Initialed for identification by Buyer _____ and Seller _____

TREC NO. 30-13[12]

[11-2-2015] (Address of Property)

refusal is exercised, this contract shall terminate and the earnest money shall be refunded to Buyer.

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. 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 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: _____

5. EARNEST MONEY: Within 3 days after the Effective Date [~~Upon execution of this contract by all parties~~], Buyer must [~~shall~~] deposit \$ _____ as earnest money with _____, as escrow agent, at _____ (address). Buyer shall deposit additional earnest money of \$ _____ with escrow agent within _____ days after the Effective Date [~~effective date~~] of this contract. If Buyer fails to deposit the earnest money within the time [as] required [by this contract], Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer deposits earnest money [Buyer will be in default]. Time is of the essence for this paragraph.

6. TITLE POLICY:

- 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) Terms and provisions of the Documents including the assessments and platted easements.
 - (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.
- 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, due to factors beyond Seller's control, 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. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed in the Commitment other than items 6A(1) through (8) 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 and Exception Documents. 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

[11-2-2015] (Address of Property)

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. ~~[Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.]~~

D. 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) 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.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) 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 [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 Texas Property Code does not require this Seller to furnish the Notice.
- 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 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' 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 to matters disclosed in the Commitment have been cured, 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. Buyers 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**

Initialed for identification by Buyer _____ and Seller _____

TREC NO. 30-13~~12~~

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. 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; lender, FHA, or VA completion requirements; 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.

(3) Except as provided by 12(A)(4) below, Buyer shall pay any and all Association fees or other charges resulting from the transfer of the Property not to exceed \$ _____ and Seller shall pay any excess.

(4) Buyer shall pay any deposits for reserves required at closing by the Association.

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, regular condominium 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. Cash reserves from regular condominium assessments for deferred maintenance or capital improvements established by the Association will not be credited to Seller. Any special condominium assessment due and unpaid at closing will be the obligation of Seller.

14. CASUALTY LOSS: If any part of the Unit which Seller is solely obligated to maintain and repair under the terms of the Declaration is damaged or destroyed by fire or other casualty, Seller shall restore the same 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. If any part of the Common Elements or Limited Common Elements appurtenant to the Unit is damaged or destroyed by fire or other casualty loss, Buyer will have 7 days from receipt of notice of such casualty loss within which to notify Seller in writing that the contract will be terminated unless Buyer receives written confirmation from the Association that the damaged condition will be restored to its previous condition within a reasonable time at no cost to Buyer. Unless Buyer gives such notice within such time, Buyer will be deemed to have accepted the Property without confirmation of such restoration. Seller will have 7 days from the date of receipt of Buyer's notice within which to cause to be delivered to

Buyer such confirmation. If written confirmation is not delivered to Buyer as required above, Buyer may terminate this contract and the earnest money will be refunded to Buyer. 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 for any other reason, 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.
 - 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, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.
 - 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](#) ~~[applicable law]~~, 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: () _____

Fax: () _____

Fax: () _____

E-mail: _____

E-mail: _____

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"/> Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum |
| <input type="checkbox"/> Loan Assumption Addendum | <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 Release of Liability on Assumption of FHA, VA, or Conventional Loan Restoration of Seller's Entitlement for VA Guaranteed Loan |
| <input type="checkbox"/> Seller's Temporary Residential Lease | <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"/> Other (list): _____ |
| <input type="checkbox"/> Addendum for "Back-Up" Contract | _____ |
| <input type="checkbox"/> Seller Financing Addendum | _____ |
| <input type="checkbox"/> Addendum for Coastal Area Property | _____ |
| <input type="checkbox"/> Short Sale Addendum | _____ |
| <input type="checkbox"/> Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law | |

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](#) ~~[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](#) ~~[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.**

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](#) ~~[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. 30-~~13~~~~[12]~~. This form replaces TREC NO. 30-~~12~~~~[11]~~.

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

Other Broker Firm _____ License No. _____ Listing Broker Firm _____ License No. _____

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

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

Associate's Name _____ License No. _____

Listing Associate's Name _____ License No. _____

Associate's Email Address _____ Phone _____

Listing Associate's Email Address _____ Phone _____

Licensed Supervisor of Associate _____ License No. _____

Licensed Supervisor of Listing Associate _____ License No. _____

Other Broker's Address _____ Phone ~~[Fax]~~ _____

Listing Broker's Office Address _____ Phone ~~[Fax]~~ _____

City _____ State _____ Zip _____

City _____ State _____ Zip _____

~~[Associate's Email Address _____ Phone _____]~~

~~[Listing Associate's Email Address _____ Phone _____]~~

Selling Associate's Name _____ License No. _____

Selling Associate's Email Address _____ Phone _____

Licensed Supervisor of Selling Associate _____ License No. _____

Selling Associate's Office Address _____ ~~[Fax]~~ _____

City _____ State _____ Zip _____

~~[Selling Associate's Email Address _____ Phone _____]~~

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 ~~[other]~~ Broker from Listing Broker's fee at closing.

OPTION FEE RECEIPT

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

Seller or Listing Broker Date

~~[CONTRACT AND]~~ EARNEST MONEY RECEIPT

Receipt of ~~[Contract and]~~ \$ _____ Earnest Money in the form of _____ is acknowledged.

Escrow Agent _____ Received by _____ Email Address _____ Date _____

~~[Escrow Agent: _____]~~ ~~[Date: _____]~~

~~[By: _____]~~ ~~[_____]~~

Address _____ ~~[Email Address]~~ _____ Phone _____

City _____ State _____ Zip _____ ~~[Phone: (____)]~~ _____ ~~[Fax: (____)]~~ _____ Phone _____ Fax _____

CONTRACT RECEIPT

Receipt of the Contract is acknowledged.

<u>Escrow Agent</u>	<u>Received by</u>	<u>Email Address</u>	<u>Date</u>
<u>Address</u>			<u>Phone</u>
<u>City</u>	<u>State</u>	<u>Zip</u>	<u>Fax</u>

ADDITIONAL EARNEST MONEY RECEIPT

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

<u>Escrow Agent</u>	<u>Received by</u>	<u>Email Address</u>	<u>Date</u>
<u>Address</u>			<u>Phone</u>
<u>City</u>	<u>State</u>	<u>Zip</u>	<u>Fax</u>

**FARM AND RANCH CONTRACT**

- 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, accessories and crops except for the exclusions and reservations, are collectively referred to as the "Property".
- A. LAND: The land situated in the County of _____, Texas, described as follows: _____ or as described on attached exhibit, also known as _____ (address/zip code), together with all rights, privileges, and appurtenances pertaining thereto, including but not limited to: water rights, claims, permits, strips and gores, easements, and cooperative or association memberships.
- B. IMPROVEMENTS:
- (1) FARM AND RANCH IMPROVEMENTS: The following **permanently installed and built-in items**, if any: windmills, tanks, barns, pens, fences, gates, sheds, outbuildings, and corrals.
- (2) RESIDENTIAL 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:
- (1) FARM AND RANCH ACCESSORIES: The following described related accessories: (check boxes of conveyed accessories) ☐ portable buildings ☐ hunting blinds ☐ game feeders ☐ livestock feeders and troughs ☐ irrigation equipment ☐ fuel tanks ☐ submersible pumps ☐ pressure tanks ☐ corrals ☐ gates ☐ chutes ☐ other: _____
- (2) RESIDENTIAL 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, and controls for: _____ (i) garages, (ii) entry gates, and (iii) other improvements and accessories.
- D. CROPS: Unless otherwise agreed in writing, Seller has the right to harvest all growing crops until delivery of possession of the Property.
- E. EXCLUSIONS: The following improvements, accessories, and crops will be retained by Seller and must be removed prior to delivery of possession: _____
- F. RESERVATIONS: Any reservation for oil, gas, or other minerals, water, timber, or other interests is made in accordance with an attached addendum **[or Special Provisions]**.
- 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)\$ _____
- D. The Sales Price ☐ will ☐ will not be adjusted based on the survey required by Paragraph 6C. If the Sales Price is adjusted, the Sales Price will be calculated on the basis of \$ _____ per acre. If the Sales Price is adjusted by more than 10%, either party may terminate this contract by providing written notice to the other party within _____ days after the terminating party receives the survey. If neither party terminates this contract or if the variance is 10% or less, the adjustment will be made to the amount in ☐ 3A ☐ 3B ☐ proportionately to 3A and 3B.
- 4. 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 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: _____
- 5. EARNEST MONEY:** Within 3 days after the Effective Date ~~[Upon execution of this contract by all parties]~~, Buyer must ~~[shall]~~ deposit \$ _____ as earnest money with _____ as escrow agent, at _____ (address). Buyer shall deposit additional earnest money of \$ _____ with escrow agent within _____ days after the Effective Date ~~[effective date]~~ of this contract. If Buyer fails to deposit the earnest money within the time [as] required [by this contract], Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer deposits earnest money ~~[Buyer will be in default]~~. 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

[11-2-2015] (Address of Property)

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) The standard printed exception for standby fees, taxes and assessments.
- (2) Liens created as part of the financing described in Paragraph 3.
- (3) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
- (4) The standard printed exception as to marital rights.
- (5) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
- (6) 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.

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, due to factors beyond Seller's control, 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 [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.** The existing survey ☐ will ☐ will not be recertified to a date subsequent to the Effective Date [effective-date] of this contract at the expense of ☐ Buyer ☐ Seller. If the existing survey is not approved by the Title Company or Buyer's lender(s), a new survey will be obtained at the expense of ☐ Buyer ☐ Seller no later than 3 days prior to Closing Date.
- ☐ (2) Within _____ days after the Effective Date [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 [effective-date] of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.
- ☐ (4) No survey is required.

D. OBJECTIONS: Buyer may object in writing to (i) defects, exceptions, or encumbrances to title disclosed on the survey other than items 6A(1) through (5) above; or disclosed in the Commitment other than items 6A(1) through (6) above; (ii) any portion of the Property lying in a special flood hazard area (Zone V or A) as shown on the current Federal Emergency Management Agency map; or (iii) any exceptions 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. [Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.]

E. EXCEPTION DOCUMENTS: Prior to the execution of the contract, Seller has provided Buyer with copies of the Exception Documents listed below or on the attached exhibit. Matters reflected in the Exception Documents listed below or on the attached exhibit will be permitted exceptions in the Title Policy and will not be a basis for objection to title:

[11-2-2015] (Address of Property)DocumentDateRecording Reference

F. **SURFACE LEASES:** Prior to the execution of the contract, Seller has provided Buyer with copies of written leases and given notice of oral leases (Leases) listed below or on the attached exhibit. The following Leases will be permitted exceptions in the Title Policy and will not be a basis for objection to title: _____

G. **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) **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.
- (3) **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.
- (4) **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.
- (5) **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.
- (6) **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.
- (7) **TEXAS AGRICULTURAL DEVELOPMENT DISTRICT:** The Property ☐ is ☐ is not located in a Texas Agricultural Development District. For additional information contact the Texas Department of Agriculture
- (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

Initialed for identification by Buyer _____ and Seller _____

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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.

NOTICE: Buyer should determine the availability of utilities to the Property suitable to satisfy Buyer's needs.

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 [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 Texas Property Code does not require this Seller to furnish the Notice.

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. COMPLETION OF REPAIRS: 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 will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs 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 repairs.

F. 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.

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. SELLER'S DISCLOSURES: Except as otherwise disclosed in this contract, Seller has no knowledge of the following:

- (1) any flooding of the Property which has had a material adverse effect on the use of the Property;
- (2) any pending or threatened litigation, condemnation, or special assessment affecting the Property;
- (3) any environmental hazards that materially and adversely affect the Property;
- (4) any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;
- (5) any wetlands, as defined by federal or state law or regulation, affecting the Property; or
- (6) any threatened or endangered species or their habitat affecting the Property.

[11-2-2015] (Address of Property)

I. 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.**

J. GOVERNMENT PROGRAMS: The Property is subject to the government programs listed below or on the attached exhibit:_____.
Seller shall provide Buyer with copies of all governmental program agreements. Any allocation or proration of payment under governmental programs is made by separate agreement between the parties which will survive closing.

8. 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, an assignment of Leases, 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: 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. 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 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 AND ROLLBACK TAXES:

A. 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.

B. 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.

14. CASUALTY LOSS: If any part of the Property is damaged or destroyed by fire or other casualty after the Effective Date [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 for any other reason, 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.
- 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, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.
- 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](#) ~~[applicable law]~~, 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:** _____

Phone: () _____

Fax: () _____

E-mail: _____

To Seller**at:** _____

Phone: () _____

Fax: () _____

E-mail: _____

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"/> Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum |
| <input type="checkbox"/> Seller Financing Addendum | <input type="checkbox"/> Seller's Temporary Residential Lease |
| <input type="checkbox"/> Addendum for Property Subject to Mandatory Membership in a Property Owners Association | <input type="checkbox"/> Short Sale Addendum |
| <input type="checkbox"/> Buyer's Temporary Residential Lease | <input type="checkbox"/> Addendum for Property Located Seaward of the Gulf Intracoastal Waterway |
| <input type="checkbox"/> Loan Assumption Addendum | <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"/> Addendum for Sale of Other Property by Buyer | <input type="checkbox"/> Addendum for Property in a Propane Gas System Service Area |
| <input type="checkbox"/> Addendum for "Back-Up" Contract | <input type="checkbox"/> Other (list): _____ |
| <input type="checkbox"/> Addendum for Coastal Area Property | _____ |
| | _____ |
| | _____ |

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 [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 [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.**

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 [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. 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. 25-12[11]. This form replaces TREC NO. 25-11[40].

RATIFICATION OF FEE

Listing Broker has agreed to pay Other Broker _____ of the total Sales Price when Listing Broker's fee is received. Escrow Agent is authorized and directed to pay Other Broker from Listing Broker's fee at closing.
 Other Broker: _____ Listing Broker: _____

By: _____ By: _____

BROKER INFORMATION AND AGREEMENT FOR PAYMENT OF BROKERS' FEES

Other Broker _____ License No. _____ Listing or Principal Broker _____ License No. _____

Associate's Name _____ License No. _____ Listing Associate's Name _____ License No. _____

Associate's Email Address _____ Phone _____ Listing Associate's Email Address _____ Phone _____

Licensed Supervisor of Associate _____ License No. _____ Licensed Supervisor of Listing Associate _____ License No. _____

Other Broker's Office Address _____ Phone _____ Listing Broker's Office Address _____ Phone _____

City _____ State _____ Zip _____ City _____ State _____ Zip _____

~~[Phone _____ Fax _____]~~ ~~[Phone _____ Fax _____]~~

~~[Associate's Email Address]~~ ~~[Listing Associate's Email Address]~~

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

Selling Associate _____ License No. _____

Selling Associate's Email Address _____ Phone _____

Licensed Supervisor of Selling Associate _____ License No. _____

Selling Associate's Office Address _____ ~~[Fax]~~

City _____ State _____ Zip _____

~~[Selling Associate's Email Address _____ Phone]~~

represents ☐ Seller only
☐ Buyer only
☐ Seller and Buyer as an intermediary

Upon closing of the sale by Seller to Buyer of the Property described in the contract to which this fee agreement is attached: (a) ☐ Seller ☐ Buyer will pay Listing/Principal Broker ☐ a cash fee of \$ _____ or ☐ _____% of the total Sales Price; and (b) ☐ Seller ☐ Buyer will pay Other Broker ☐ a cash fee of \$ _____ or ☐ _____% of the total Sales Price. Seller/Buyer authorizes and directs Escrow Agent to pay the brokers from the proceeds at closing.

Brokers' fees are negotiable. Brokers' fees or the sharing of fees between brokers are not fixed, controlled, recommended, suggested or maintained by the Texas Real Estate Commission.

Seller _____ Buyer _____

Seller _____ Buyer _____

Do not sign if there is a separate written agreement for payment of Brokers' fees.

OPTION FEE RECEIPT

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

Seller or Listing Broker

Date

[CONTRACT AND] EARNEST MONEY RECEIPT

Receipt of ~~[Contract and]~~ \$ _____ Earnest Money in the form of _____ is acknowledged.

Escrow Agent

Received by

Email Address

Date

~~[Escrow Agent: _____] [Date: _____]~~

~~[By: _____] [_____]~~

~~[Email Address]~~

~~[Phone: (____)]~~

Address

Phone

City
City

State
State

Zip
Zip

~~[Fax: (____)]~~

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

Address

Phone

City

State

Zip

Fax

