



Texas Real Estate Commission

A photograph of a modern high-rise building with a glass facade and balconies. The top of the building features the "GRAND HYATT" logo. The sky is blue with scattered white clouds. An American flag is visible in the bottom left corner.

Legal Update

Part 1
Edition 7.0

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Chapter 1

TREC Statute & Rules Update

Statutory Changes to Texas Real Estate License Act (TRELA, Act)

Senate Bill 699 amends Chapter 1101 of the Texas Occupations Code (Texas Real Estate Licensing Act, TRELA), which regulates the licensing of real estate agents and brokers. The bill clarifies and expands various definitions to ensure the Texas Real Estate Commission (TREC) has the tools needed to adequately protect Texans and updates terminology throughout the Act to current TREC practices.

Specific statutory changes:

- * Terminology changes: Salesperson is now Sales Agent; Administrator is now Executive Director; Core education is now Qualifying education.
- * Clarifies that “acts of brokerage” include advice regarding the negotiation or completion of a “short sale” and optioning property through “lease to purchase.”
- * Allows TREC commissioners and staff to make uncompensated presentations to groups of license holders with those presentations being able to qualify for continuing education credit (1101.061).
- * Provides TREC additional flexibility regarding the content and delivery of various statutory notices to consumers, including *Information About Brokerage Services* (1101.202, 1101.558, and 1101.605).
- * Clarifies that a current license term period is 24 months (1101.451).
- * Requires additional education if an applicant fails the examination three times (1101.405).
- * Requires the eight hours of non-elective CE be taken before *first* renewal of sales license (1101.454).
- * Clarifies TREC’s ability to set continuing education (CE) requirements by rule, subject to a minimum requirement of 15 hours and limits TREC’s ability to increase CE hours by no more than three hours over a license term (1101.455).
- * Expands legal and ethics continuing education course to eight hours to include more content on promulgated contracts and the other listed statutory topics (1101.455).
- * Sets reporting restriction to match the continuing education hours claimed (replacing the 24-hour rule) (1101.455).
- * Adds a two-year waiting period for reapplication after revocation, surrender, or denial of a license after the opportunity for a hearing (1101.663).
- * Allows agency’s investigative files to remain confidential until the investigation is completed (1101.2051).
- * Updates certain procedures regarding a respondent’s failure to appear at hearing and authorizes cost recovery for the agency should a SOAH judge

deem it appropriate (1101.664).

- * Clarifies the process for contributions to, replenishment of, and claims against the recovery fund (1101.603 and 1101.605).
- * Establishes a connection between a designated broker and business entity broker regarding claims against the recovery fund (1101.6011 and 1101.610).
- * Clarifies that timely repayment of the fund is necessary to maintain a license (1101.665).

Commission Rule Changes

It is every license holder's responsibility to know and operate under the current laws applicable to their license. TREC communicates proposed and adopted rule changes to license holders eight times each year through the *Advisor* electronic newsletter. Recently adopted or proposed rules can also always be found on the TREC website at www.trec.texas.gov/formslawscontracts/rules_codes/Rule.asp. This section highlights certain rule changes adopted by TREC since January 1, 2014.

Some of the legislative changes above will require rule changes; refer to Appendix D for recently adopted rules, and be sure to read the TREC Advisor regularly to stay informed.

- * "Licensee" is now "license holder" throughout the rules.
- * **§535.2, Broker Responsibility** Requires the broker give notice of the scope of authorized activities to a sponsored sales agent in writing.
- * **§535.4, License Required** Holds a person conducting brokerage business from another state through the mail, Internet or other medium under the jurisdiction of Texas Real Estate Licensing Act if the property is located in Texas.
- * **§535.44, Commission Seal** (New) clarifies TREC seal may be used only by TREC.
- * **§535.53, Business Entity; Designated Broker** The amendments clarify the requirements necessary to apply for a business entity broker license and add language regarding what is required to meet the "in good standing" TREC standard set out in §1101.355 of the Texas Occupations Code for a broker to act as designated broker for a business entity. For example, a broker may not act as a designated broker for an entity if the broker's license was revoked or suspended, including probated revocation or suspension, in the past two years or if the broker has any past due monetary obligations to TREC.
- * **Subchapter E** Regarding Requirements for Licensure, were reorganized and clarified.
- * **Subchapters F and G** Regarding Requirements for Education Providers, Course and Instructors for Qualifying and CE Education were reorganized and clarified.
- * **§535.91 Renewal of a Real Estate License** The fee to defer completion of continuing education for up to an additional 60 days will now be due at the time of the filing of the renewal application and CE credit for a subsequent licensing period will not start until after all deferred CE has been completed.
- * **§535.93. Late Renewal Applications** A CE deferral fee and a CE late reporting fee may be due depending on when CE for the subsequent licensing period was completed.
- * **§535.146, Maintaining Trust Money** (New) combines and replaces §535.146, §535.159 and §535.160. It clarifies that a broker may only authorize another license holder to withdraw or transfer money from a trust account. The broker still remains ultimately responsible and accountable for all trust funds.
- * **§535.401, Required Notices** The amendments update and clarify the form *Easement and Right-of-Way* that agents are required to give a consumer prior to the consumer entering into a transaction concerning an easement or right-of-way.

- * **§535.223, Standard Inspection Report Form** The amendments notify consumers regarding potential hazards with improper bonding of corrugated stainless steel tubing (CSST) or other metal gas tubing by adding language to the “Consumer Notice Concerning Hazards or Deficiencies” section, in the standard inspection form *Property Inspection Report Form REI 7-5*.

Property Management

Legislative Changes

House Bill 311

Amends Property Code Sections 5.062, 5.064, 5.066, 5.070, 5.076, 5.077, 5.079, and 5.081

Effective September 1, 2015

Relating to an executory contract for the conveyance of real property; providing a civil penalty.

This bill amends provisions of the Property Code relating to executory contracts for conveyance of real property (also known as “contracts for deed”) to make contracts for deed more akin to transactions employing traditional seller-financing using a deed and lien (such as a vendor’s lien or deed of trust). In fact, the bill specifies that a recorded executory contract is the same as a deed with a vendor’s lien (in other words, on recording, an executory contract conveys legal title to the purchaser subject to a lien retained by the seller for the amount of the unpaid contract price less any lawful deductions). A seller must record the contract within 30 days after its execution. The bill denies sellers the remedies of rescission and forfeiture and acceleration if the contract has been recorded. A seller who violates the recording requirement is liable to the purchaser in the same manner and for the same amount as a seller who violates statutory requirements for the transfer of recorded, legal title to the property, except that damages are limited to \$500 per year of noncompliance (but without prejudice to other remedies a purchaser may have under other law).

Senate Bill 478

Adds Government Code Section 22.019

Effective September 1, 2015

Relating to the promulgation of certain forms for use in landlord-tenant matters.

This bill requires the Supreme Court of Texas to promulgate standardized forms to be used by individuals representing themselves in residential landlord-tenant matters and to provide instructions for the proper use of each form. The bill requires the forms and instructions to be written in plain language easy for the general public to understand, to clearly and conspicuously state that the form is not a substitute for an attorney’s advice, to be made readily available in the manner prescribed by the Supreme Court, and to be translated into Spanish (though the Spanish forms are for information only and may not be used in court). The bill requires the clerk of a court to inform members of the public of the availability of the forms and to make the forms available free of charge. A court must accept use of a form unless the form has been completed in a manner that causes an incurable substantive defect.

House Bill 1510

Adds Property Code Section 92.025

Effective January 1, 2016

Relating to liability of persons who lease dwellings to persons with criminal records.

Establishes that no cause of action accrues against a landlord or its manager or agent solely for leasing a dwelling to a tenant who has been convicted of, or arrested or placed on deferred adjudication for, an offense. (The intent of this bill being to make available more housing opportunities for formerly incarcerated individuals, thereby decreasing homelessness and recidivism.) Causes of action for negligence, however, are not precluded if the tenant was convicted of (or has a reportable offense for) one of a list of crimes involving murder, burglary, sexual assault, indecency with a child, prostitution, human trafficking, elder or child abuse, sex offenses, and similar offenses and the landlord, manager, or agent knew or should have known of the conviction or adjudication.

Senate Bill 1626

Amends Property Code Section 202.010

Effective Date: September 1, 2015

Relating to the regulation by a developer of the installation of solar energy devices in a residential subdivision.

Chapter 202 of the Property Code limits restrictions that may be imposed against installation of solar energy devices in a residential subdivision. Prior to this bill, however, Chapter 202 allowed developers to limit or restrict property owners from installing solar energy devices during the development period. This bill limits this right to developers of developments of 50 units or less.

House Bill 2066

Adds Property Code Section 51.016

Effective September 1, 2015

Relating to the rescission of non-judicial foreclosure sales.

This bill applies only to non-judicial foreclosure sales of residential property and permits a mortgagee, trustee, or substitute trustee to rescind a sale within 15 days after the foreclosure if

- * statutory requirements for the sale were not met,
- * the underlying default was cured before the sale,
- * a receivership or dependent probate administration involving the property was pending at the time of sale,
- * a sale condition specified by the trustee or substitute trustee before the sale was not met,
- * the mortgagee or mortgage servicer and the debtor agreed to cancel the sale beforehand based on the debtor's agreement to cure, or
- * a bankruptcy stay was in effect at the time of sale.

The sales price must be returned to the purchaser and the debtor must return excess proceeds if the sale is rescinded. Challenges to the rescission must be brought within 30 days after the date required notices of the rescission are recorded. A purchaser who effectively challenges a rescission is entitled to damages only in the amount of the portion (if any) of the purchase price not returned to the purchaser plus interest (unless the rescission is due to bankruptcy, in which case no interest is payable).

House Bill 2207

Adds Property Code Chapter 66

Effective September 1, 2015

Relating to the foreclosure sale of property subject to an oil or gas lease.

Makes clear that a foreclosure sale does not cut off an oil and gas lease if the lease is recorded prior to the sale. (An oil and gas lease is not a “lease” in the traditional sense; rather it is a determinable conveyance of an interest in the mineral estate.) Notwithstanding the preceding, if the foreclosed property includes an interest in hydrocarbons as well as the surface, the foreclosure sale terminates the oil or gas lessee’s surface rights to the extent the foreclosed mortgage had priority over the lease.

Property Management Issues

The Real Estate Center at Texas A&M University publishes *Landlord and Tenants Guide* that is helpful in addressing many questions for property managers, tenants and landlords. The manual is a free download on the Center’s website (recenter.tamu.edu).

The Property Code has three chapters which specifically govern the Landlord-Tenant relationship:

- * Chapter 91, applies to both residential and commercial tenancies;
- * Chapter 92, applies to residential tenancies; and
- * Chapter 93, applies to commercial tenancies.

There are other statutes that may affect residential and commercial tenancies not discussed here, such as lead-based paint disclosures, asbestos removal, American with Disabilities Act, and others.

Questions Related to Residential Tenancies

Which conditions must a landlord repair regardless of what the lease may provide?

Unless the landlord agrees otherwise, which conditions might the landlord not repair?

What is a reasonable time for making repairs in a residential tenancy?

What is the definition of a **security deposit**?

When should a residential landlord return a security deposit?

What charges may a landlord deduct from the security deposit?

Why is it important for a tenant to provide the landlord with a forwarding address after a lease ends?

May a tenant use the security deposit to pay the last month’s rent?

Is a landlord required to provide an itemization of charges he withholds from the security deposit?

Where must smoke alarms be located in the premises?

When must the landlord inspect the smoke alarm, and how is it inspected?

Does a landlord have a duty to install fire extinguishers in the dwelling?

Do certain conditions have to be met before a landlord may charge a late fee?

Must a landlord provide a copy of the lease to the tenant?

May a landlord refuse to accept cash from a tenant?

What should the landlord do with the tenant’s property and the security deposit if the tenant dies?



What security devices must the landlord install, and when must the landlord rekey the security devices?

Questions Relating to Both Commercial and Residential Tenancies

What is normal wear and tear?

Is subletting of leased premises permitted?

Does a landlord have a duty to mitigate damages if the tenant abandons the lease early?

Questions Relating to Commercial Tenancies

Can a commercial landlord interrupt a tenant's utility service if the tenant does not pay rent?

When may a commercial landlord prohibit the tenant from entering the leased premises?

When does a commercial tenant abandon the premises?

When must a commercial tenant's security deposit be refunded?

What may the commercial landlord deduct from the security deposit? What type of documentation must the landlord provide to the tenant about deductions?

What items may not be deducted from the commercial tenant's security deposit?

If ownership of the property changes during a commercial tenancy, which owner is liable for the return of the security deposit, the former or new owner?

May a commercial tenant withhold the last month's rent in lieu of the security deposit?

Must a commercial tenant provide an itemized list of deductions to the security deposit?

security deposit - any advance of money, other than a rental application deposit or an advance payment of rent, intended primarily to secure performance of the residential lease that has been entered by both a landlord and tenant

The Case of the Unrentable Condo

An Agent Must Not Act Negligently

Marisol contacted Manfred, a Texas real estate agent, to help her purchase a rental property in the Plano area. Manfred found a condo for sale. The listing agent for the unit was Dantrell. Dantrell was also the principal in Outasight Property Management, which was the leasing agent for the unit. Dantrell informed Manfred that the unit was ready and available to be leased immediately, either to the existing tenant or a new tenant after the sale. The sale closed; Marisol did not retain Outasight Property Management as her property manager. Within one month of the sale, Marisol leased the condo unit to a new tenant on a two-year lease. The next month, the condo association informed Marisol that the property was subject to a lease restriction in which a new owner could not lease a unit for 12 months from the purchase date, there was up to a \$500 per day fine for the violation, and the tenant would have to move out. The tenant refused to move out voluntarily, and Marisol had to hire an attorney to start eviction proceedings. The tenant fought the eviction proceedings, including filing bankruptcy. Marisol was fined \$4,000 by the association and incurred attorney fees and costs in excess of \$16,000. She also lost eight months of rental income totaling nearly \$10,000. The cost to lease the condo, after the 12-month period expired, was estimated to be \$2,400. Marisol sued Dantrell and his broker for all of her losses plus triple damages under the DTPA.

DISCUSSION

1. Should Dantrell have known that there was a leasing restriction for new owners of the property?
2. Would it make a difference if Dantrell's broker represented sellers or buyers in the sale of seven other units in that building in the past year?
3. Would it make a difference if, in his role as property manager for the unit, Dantrell signed a document on behalf of the landlord that stated "tenant has been provided a copy of the HOA rules and regulations or is aware they can be viewed on the condominium website at www.condoweb.com" six months before the sale?
4. Did Dantrell have a duty to disclose the leasing restriction on the property if he was aware of it?
5. Should Manfred, as the buyer's agent, have known that there was or could have been a leasing restriction on the property?
6. What steps should an agent take as a property manager, listing agent or buyer's agent to be sure their clients are fully informed about condominium property restrictions?

Chapter 3

Buyers, Landlords, Tenants & Sellers

Legislative Changes

House Bill 1221

Amends Property Code Section 5.008

Effective January 1, 2016

Relating to seller's disclosures in connection with residential real property subject to groundwater regulation.

Adds to the standard residential property seller's disclosure notice required under Section 5.008 of the Property Code a requirement that a seller disclose whether he or she is aware that any portion of the property is located in a groundwater conservation district or a subsidence district. (Such location may affect a purchaser's ability to draw groundwater.)

House Bill 1665

Adds Property Code Section 5.019

Effective September 1, 2015

Relating to notice of water level fluctuations to purchasers of real property adjoining an impoundment of water.

Requires a seller of residential or commercial property adjoining a lake, reservoir, or other impoundment of water with a normal operating capacity of 5,000 acre-feet or more to give the purchaser a statutorily prescribed form of notice, as follows:

"NOTICE OF WATER LEVEL FLUCTUATIONS

The water level of the impoundment of water adjoining the property at _____ (street address and city) or described as _____ (legal description) 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."

DISCUSSION

Read the script, *Document, Document, Document* in Appendix B.

1. Should all of these documents have been presented to the seller (Otto) for signature at this time?
2. Are there any issues with the description of the various documents to Otto?
3. With all these documents, are there any documents missing?
4. This scenario is based on a TREC complaint. In addition to the above scenario, Maynard listed the property in MLS as “appointment only – call listing agent.” This notation remained after the tenant vacated the property. Is this a problem knowing that Otto wanted to sell the property quickly?
5. Are there other issues Maynard should address?

The notice must be given on or before the effective date of a contract binding the purchaser; otherwise, the purchase may terminate the contract for any reason within seven days after receiving the notice from the seller or information described by the notice from any other person. After the date of conveyance, the purchaser may bring an action against the seller for misrepresentation if the seller failed to give the notice before the conveyance and had actual knowledge that the water level fluctuates.

The Out-of-Date Seller’s Disclosure

In *Domel v. Birdwell*, 2014 WL 4347815 (Tex. App. –Eastland 2014), Birdwell sued Domel for negligent misrepresentation and other claims that arose out of Birdwell’s purchase of Angel Fire Ranch. Waite was Domel’s listing agent. The Domels had lived there for several years, but wanted to move closer to Austin because of their business interests. Waite had the Domels fill out of Seller’s Disclosure, sign it and then return it to him. The notice indicated that the seller agreed to amend any applicable notices in disclosures during the listing period. The notice also contained the statement that there had been no prior flooding, no prior insurance settlements, and no prior damage to the roof.

Birdwell had the property inspected again after the closing and discovered that the entire roof needed to be replaced. Upon being contacted by the real estate broker, Waite, the Domels did not deny that they had filed an insurance claim and lied on the Seller’s Disclosure when they checked “no” on the insurance settlements disclosure. In fact, they had received a check for \$114,650.04 in a settlement.

Later, Birdwell discovered that there was also prior flooding on the property that also was not disclosed. The Domels admitted that they never amended the notice and didn’t think they had a duty to amend the notice even though the notice was over a year old.

One of the key issues discussed by the appellate court was whether or not the Domels had a duty to update the Seller’s Disclosure form. The court noted that Section 5.008 of the Property Code does not, in itself, create a continuing duty or obligation to update matters on the form. The court did hold, however, that there is such a duty to disclose in four situations:

1. where there is a confidential or fiduciary relationship;
2. when one voluntarily discloses information, the whole truth must be disclosed;
3. when one makes a representation, new information must be disclosed when that new information makes the earlier representation misleading or untrue; and
4. when one makes a partial disclosure and conveys a false impression.

The court also cited a corollary principle: when there is a duty to speak, silence may be as misleading as a positive misrepresentation of existing facts. The appellate court then affirmed \$264,926 in damages, \$67,000 in attorney’s fees, and \$19,161.77 in prejudgment interest.

Chapter 4

Promulgated Contract & Addendum Forms

Promulgated Contracts

Promulgated contracts and addenda are created and revised by the Broker Lawyer Committee. This committee is statutorily authorized to create promulgated contracts for TREC, and TREC has the authority to require their use by license holders. The Broker Lawyer Committee consists of six attorneys appointed by the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the Governor. TREC-approved contract forms are intended for use by licensed real estate brokers or sales agents who are trained in their correct use. Mistakes in the use of a form may result in financial loss or an unenforceable contract.

Promulgated Contract Changes Since January 1, 2014

TREC Form No. 47-0, *Addendum for Property in a Propane Gas System Service Area* (New) 2014

TREC Form No. 9-12, *Unimproved Property Contract* 2015

TREC Form No. 20-13, *One to Four Family Residential Contract (Resale)* 2015

TREC Form No. 23-14, *New Home Contract (Incomplete Construction)* 2015

TREC Form No. 24-14, *New Home Contract (Complete Construction)* 2015

TREC Form No. 25-11, *Farm and Ranch Contract* 2015

TREC Form No. 26-7, *Seller Financing Addendum* 2015

TREC Form No. 30-12, *Residential Condominium Contract (Resale)* 2015

TREC Form No. 32-4, *Condominium Resale Certificate* 2015

TREC Form No. 38-5, *Notice of Buyer's Termination of Contract* 2015

TREC Form No. 39-8, *Amendment to Contract* 2015

TREC Form No. 40-7, *Third Party Financing Addendum* 2015

OP-H, *Seller's Disclosure of Property Condition* 2015

Redline versions of the new forms can be found at http://www.trec.texas.gov/formslawscontracts/rules_codes/Rule.asp under recently adopted rules. The new forms are available for use at <http://www.trec.texas.gov/formslawscontracts/forms/forms-contracts.asp>.

Contract Changes Highlights

The noted changes apply to all contract forms unless specified otherwise. Paragraph numbers referenced are from the *One to Four Family Residential Contract (Resale)*. The *One to Four Family Residential Contract (Resale)* and the new *Third Party Financing Addendum* will be reviewed in detail later in this chapter.

- * Paragraph 3, Sales Price, now references all of the financing addenda previously contained in paragraph 4 of the old versions.
- * The *Third Party Financing Addendum* is completely rewritten and addresses both credit approval and property approval by the lender. Reverse mortgage loans are also addressed in this addendum, so form OP-N, *Reverse Mortgage Financing Addendum* is repealed.
- * *Credit Approval* was renamed *Buyer Approval*.
- * The Authorization to Release Information was expanded to include title companies and escrow agents for closing disclosure.
- * A new paragraph 4 is added regarding license holder disclosure. This paragraph is where a license holder will disclose that he or she is a party to the transaction or related to a party that requires disclosure under the law.
- * A new paragraph 6E(10), Title Notices, Notice of Water Fluctuations, is added to add new statutory notice requirement regarding the fluctuation of the level of certain impoundments of water that adjoin a property.
- * Paragraph 7A, Property Condition, Access, Inspections and Utilities, is amended to add a provision that hydrostatic testing must be authorized in writing by the seller.
- * Paragraph 9B(5), Closing, is amended to conform the language with a statutory change to the property code, noting that the buyer has to acknowledge to a tenant that the buyer has *acquired* the property and is responsible for the return of the security deposit.
- * Paragraph 14, Casualty Loss, is amended to make it clear that an insurance company must permit insurance proceeds to be assigned to the buyer before the buyer can use this option after a casualty.
- * Paragraph 18D, Escrow Damages, is amended to take out the treble damages provision based on recent case law.
- * Paragraph 23, Termination Option is amended to require a 5 p.m. local time deadline for delivery of all notices under the paragraph.
- * License numbers are added to the Broker Information Section to facilitate compliance with the TILA-RESPA Integrated Disclosure Rule, and the order of the Associate and the Associate's Supervisor were reversed.
- * Paragraph 13, *Prorations and Rollback Taxes*, in the *Farm and Ranch* and *Unimproved Property Contract* forms, is amended to provide that assessments imposed due to the seller's use or change in use of the property are the seller's responsibility.
- * A new Paragraph 2D to the *Condominium Contract Form* is added to address situations where the condominium documents reveal the existence of a right of first refusal after the parties enter into a contract.
- * The *Condominium Resale Certificate* is amended to conform to new statutory disclosure requirements.
- * The *Seller's Disclosure of Property Condition* (OP-H) is amended to conform to a new statutory requirement.
- * The Amendment form and Seller Financing Addendum were revised to be consistent with changes to the contract forms and Thirty Party Financing Addendum.

Featured Contract Review

One-to-Four Residential Contract (Resale) - Appendix A

The purpose of this section is to review TREC forms and to look at the new provisions in order to bring out a discussion about common problem areas and provisions that are commonly misunderstood.

Paragraph 1

How do you verify that you have correctly listed the parties to the contract? That the seller is the title holder of the property?

Paragraph 2

2.A. How do you verify that you have correctly inserted the legal description?

TREC Case Study 1

Seller Arnold's property consisted of three parcels: Parcel 1, Lots 8 and 9R; Parcel 2, Lot 10R; and Parcel 3, Lot 11R. Each had a separate Tax ID Number. The listing agreement and the MLS referred only to lots 8 and 9R. The seller's agent, Amos, had a copy of the survey that showed all four lots. A copy of the survey was available as an "additional document" on the MLS, and a copy was provided to the buyer.

In the contract, the buyer's agent, Daphne, wrote in "Lots 8 and 9" instead of Lots 8, 9R, 10R and 11R. The survey was not included as an exhibit to the contract. Amos never noticed that the legal description was incomplete. The title commitment referred only to Lots 8 and 9R.

The problem with the legal description was discovered at the first attempt to close. Closing was then delayed awaiting resolution of the discrepancy regarding the complete legal description. The buyer's VA lender required the three parcels to be combined into one and to be replatted by the county. Amos helped complete this process, and the transaction closed three months later.

DISCUSSION

What could Amos have done to avoid this complaint and the delay?

Paragraph 3

This paragraph has been amended to include the financing addendum options formerly in Paragraph 4. The revised Third Party Financing Addendum contains the other parts of old Paragraph 4 and is discussed below. In Paragraph 3 be sure to fill in all of the blanks and check the math. This paragraph often gets changed during the negotiations. How do you properly document contract price revisions?

Can multiple boxes be checked in 3.B?

Third Party Financing Addendum

The revised addendum contains all of the information contained in the prior addendum as well as addressing reverse mortgage financing (previously in form OP-N) and the property approval provisions previously contained in former paragraph 4. The information is reorganized but essentially the same.

Which type of approval does the Third Party Financing Addendum address?

What is the difference between financing (loan) approval, property approval and buyer approval (formerly credit approval)?

True or False:

1. The amount listed as the principal amount of the loan(s) in the addendum(s) should match the amount in Paragraph 3B of the contract.
2. If the buyer receives buyer approval during the time period stated in the addendum, the earnest money will not be refunded if the loan does not close.
3. Suppose the buyer received buyer approval and after the time period for termination under the addendum had passed, something changed in the buyer's circumstances that caused the lender to subsequently disapprove the loan based on the buyer's credit. The buyer can then give the seller notice, and the earnest money is returned to the buyer.
4. The buyer's notice of failure to receive buyer approval from the lender, written on a napkin and given to the seller before the deadline, is sufficient to terminate the contract and receive a return of the earnest money.
5. If the seller does not believe the buyer was denied buyer approval after the buyer sends notice of termination stating such, the seller can demand proof from the buyer.

TREC Case Study 2

Sales agent Sam entered into a contract to sell his own real property with Buyer Betty. Sam disclosed in the contract that "one owner was a realtor." Betty paid \$1,000 earnest money, and the closing was scheduled. The contract included a Third Party Financing Addendum for Credit Approval that gave the buyer 30 days after the effective date to give the seller written notice of termination if credit approval was not received.

After 30 days, Betty did not give Sam notice of termination based on lack of credit approval. Three days later, Sam presented Betty with a Notice of Seller's Termination of Contract stating that Sam had a right to terminate because Betty was in default for failing to provide Sam any third party financing information within the 30-day period. Betty relied on Sam's representation and signed the termination agreement. The contract was terminated, and three days later, Sam returned the earnest money to Betty.

DISCUSSION

Was there a violation of statutes or TREC rules in this case? Why?

Paragraph 4

This paragraph is new. 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 percent 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 must notify the other party in writing before entering into a contract of sale. License holders who are members of trade associations such as the Texas Association of REALTORS, may need to make additional disclosures in similar situations. This paragraph provides a space for a license holder to disclose either of those required relationship disclosures.

Paragraph 5

- * Who decides on the amount of earnest money and who chooses the escrow agent?
- * Should you fill in the name of a specific closer at a title company or just the title company?
- * When would you use the additional earnest money deposit provision?

Paragraph 6

- * 6.A.8 Why would a buyer want to have the standard printed exception amended to read “shortages in area?”
- * 6.B&D When the license holder receives the title commitment, what is done with it?
- * What happens if the title company issues a revised commitment after you have reviewed the first one?
- * 6.C If the seller furnishes an existing survey, how old can the survey be?
- * 6.C What happens if the seller checks box (1) and then cannot locate the existing survey?
- * 6.C What happens if the seller checks box (1) and furnishes the existing survey, but the survey is not acceptable to the buyer’s lender?
- * A new paragraph 6E(10), Title Notices, Notice of Water Fluctuations, was added. A bill recently passed that now requires a statutorily prescribed notice about the fluctuation of the level of certain impoundments of water that adjoin a property. The statutory notice is provided in its entirety in the contract and no additional addendum is required.
- * 6.E Why is it important to be familiar with the area in which you sell properties?

TREC Case Study 3

Sales agent Lan obtained a listing agreement to sell Sarah’s home. Sarah informed Lan that part of the lot had been sold in 2010 and that she did not have a copy of the survey from the 2010 transaction.

When Lan listed the home in the MLS, the acreage auto-populated with information from the county appraisal district. Buyer Bob requested a survey of the property and was provided with a survey from 1993. When Bob used the 1993 survey to walk the property line of the home, he noticed that an area had been parceled off—the piece sold in 2010. In negotiations, Bob requested that Sarah pay for a new survey of the property. The new survey showed that the actual acreage of the property was a quarter of an acre less than what was advertised on the MLS. Bob filed a complaint against Lan. Lan’s broker, Jim Bob, was not aware of any issues related to the transaction until after the complaint was filed. He was also not aware that Lan used the name “Lan & Company” in his real estate practice.

DISCUSSION

1. How might Lan’s actions be considered a violation of TREC’s rules or the Real Estate License Act?
2. Should Lan have recommended that Sarah have the property resurveyed before listing it?
3. Would you consider the MLS listing a misleading advertisement? Note: The intent to mislead is not required for an advertisement to be misleading.
4. How could a broker prevent an issue like this from occurring?
5. What TREC violations occurred?



Paragraph 7

In certain areas of the state, there has been a debate as to whether a hydrostatic test is an inspection that was permitted under the language in Paragraph 7A or an invasive procedure that the seller could prohibit the buyer from conducting. Since there are questions regarding whether hydrostatic testing may cause damage to a property, the Broker-Lawyer Committee amended Paragraph 7A to make a hydrostatic test a negotiable item between the parties, requiring the seller's written consent before it may be performed.

- * 7.A What is an inspection? May buyers test any structure or system in the house in any fashion they want? When is a test too invasive to be considered an inspection?
- * 7.A A static line test is performed with permission of the seller. During the test, a pipe bursts. Who is responsible for fixing the pipe, seller or buyer? What factors could affect your answer?
- * 7.A May a buyer request that additional inspections be performed after the option period has expired?
- * 7.A Who decides the time of day when inspections can be conducted?
- * 7.B Does it matter if the Seller's Disclosure Notice is given to the buyer after the contract is signed by the parties?

True or False

- * 7.D If the Buyer agrees to take the property "As Is," there is no need to elect the option period in paragraph 23.
- * 7.D If you wait until after inspections are performed during the option period to name the items the seller will fix prior to closing, you can just insert "repairs per inspection" in the blank in 7.D.(2).
- * 7.E A seller may perform any required repairs if no license for the repair is required by law.
- * 7.E A handyman is considered commercially engaged in providing repairs for things like caulking a tub, fixing a shelf or re-splining a screen.
- * 7.H If the seller pays for a residential service contract for the buyer at closing and the seller's agent receives a fee for services from the residential service company in connection with that real estate transaction, the seller has to give the buyer a disclosure statement at closing.

Paragraphs 9 & 10

Paragraph 9, Closing, was not amended to add a provision to extend the closing if the buyer's lender is required to provide additional disclosures mandated by the TILA-RESPA Integrated Disclosure Rule. Parties can address any such delays in the same manner as any other closing delays by negotiating an amendment to the contract.

Paragraph 9B(5) is amended to conform the language with a statutory change to the Property Code, requiring the buyer of a tenant-occupied property to acknowledge to a tenant that the buyer has acquired the property and is responsible for the return of the security deposit. This includes situations regardless of whether the parties choose to transfer the security deposit or not.

- * How should a license holder handle possession issues when one party has to be out of their house before the closing date or the closing is delayed at the last minute, and one party has a moving truck loaded and ready to go?
- * What should a license holder tell a buyer if there appears to be a problem with a current lease on the property?

Paragraph 11

Discuss this statement: Only an experienced license holder should coach his or her client on how to use the special provisions section to get an advantage in the contract.

Paragraph 12

Insert the amount if the seller is paying any fees or making other concessions for the buyer.

Paragraph 13

What type of issues with proration should you anticipate?

Paragraph 14

True or False: If the property is destroyed by fire and the seller cannot restore the property, and the buyer still wants the property, the buyer can always close on the damaged property and receive an assignment of insurance proceeds.

Paragraph 18

This paragraph is amended in light of recent case law, which held that trebling the amount of the earnest money for wrongfully withholding the earnest money is not a proper measure of damages.

True or False: An escrow agent becomes a party to the contract under this paragraph once the escrow agent accepts the earnest money.

Why doesn't the title company release the earnest money when it is clear from the terms of the contract that the client should get the money?

Paragraph 21

True or False: To make sure that the license holder is on top of all phases of the transaction, a best practice is to put the license holder's name and information in this notice section.

Paragraph 23

The Termination Option paragraph is amended to set the time on the last day of the option by which it must be exercised as 5 p.m. local time where the property is located.

- * Make sure to fill in all blanks and check the applicable box. What happens if they are not checked or filled in?

True or False: Option money can be delivered to the seller, broker or title company.

Never Give Option Money to the Title Company

A buyer's agent delivered an option check to Chickenfeed Title Inc. The front desk clerk at Chickenfeed accepted the option money check along with the earnest money check and the contract. The clerk then placed the contract and the option check into a folder and left it on the desk of a closer who was on vacation.

The listing agent wondered why he never received an option check. The buyer's agent never verified that the check was delivered to the seller or the listing agent. Five days later when the closer returned from vacation, she found the option check in the file and noticed the five-day-old effective date. She notified the buyer's agent and the listing agent. The listing agent said, "Wow, I just assumed since no money was tendered that the buyer had decided it was okay to just have a contract with no option."

The buyer's agent said, "Well, ###!" The buyer was under contract with no termination option.

DISCUSSION

What should the buyer's agent have done?

Never Give Option Money to the Title Company, The Sequel

A buyer's agent delivered the earnest money and option money to the title company on the second day after the effective date of the contract. The title company emailed the listing agent and informed her that the check was available to be picked up. The listing agent replied via email that it was not her job to pick it up and that the buyer's agent needed to deliver the option check to her or to her broker by the next day or the buyer would be under contract with no option. The option check was not picked up.

The buyer had inspections done and requested repairs. The seller and the listing agent reviewed this request. The seller responded that he was not interested in performing the repairs. The response was delivered in writing to the buyer's agent. The buyer's agent, on behalf of her buyer, sent a termination form and a release of earnest money form to the listing agent. The listing agent responded that the buyer did not have a right to terminate, because there was no option period because no option money was received.

The buyer went to the title company and raised a fuss in the lobby, demanding the earnest money. The title company, not wanting to lose business from either brokerage, paid an amount equal to the earnest money to the buyer. The buyer was happy to receive the earnest money; however, the seller wondered who gave the title company the authority to release the buyer from a contract without the seller's permission.

DISCUSSION

What do you see that could have or should have been done?

TREC Case Study 4

Broker Bob represented a buyer in a transaction to buy real estate in Irving, Texas. The residential contract was executed on October 6th. The buyer paid \$2,000 as earnest money. The contract included an option period that expired October 13th.

On the evening of October 13th, buyer Shakira left Bob a voice mail to terminate the contract. After listening to the Shakira's voicemail, Bob sent a notice of buyers' termination of contract pursuant to the unrestricted right of the buyer to terminate the contract under the option period clause, along with a request for release of earnest money to the seller, Lupe. Both documents were signed and dated October 14th.

On October 17th, after several emails between Bob, Shakira, Lupe, and the title company, Lupe informed Shakira that the termination was late and the earnest money was forfeited.

DISCUSSION

- * What should Bob have done to avoid this result? Does it make a difference when Bob listened to the voicemail?
- * Was there a violation of TRELA or TREC rules in this case?

Paragraph 24

Make sure your client reads this section.

Effective Date

Who fills in the effective date and when?

1. Why is the effective date critical?
2. Does a blank effective date invalidate the contract?

Broker Information

Please note that to help with compliance with new CFPB rules, license holders must now fill in their license number in this section.

Why do license holders only print their names and not sign?

Option Fee Receipt

Why should the broker have a policy regarding who can sign for receipt of an option fee? What do you think that policy should be?

Chapter 5

Unauthorized Practice of Law

Introduction

Only members of the State Bar of Texas and other persons who comply with the Texas Supreme Court's rules regarding the practice of law may practice law in Texas (22 TAC 537.11).

With respect to out-of-court functions, the "practice of law" is a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined (§81.101, Government Code). See Appendix C.

DISCUSSION

1. Because the definition of practicing law includes the service of preparing a contract, how is it that real estate brokers and sales agents can prepare contracts for their clients and customers?
2. Is it possible for a license holder to engage in the unauthorized practice of law if he or she uses only standard forms promulgated by TREC or TAR?
3. What are some of the services or actions that license holders must be cautious to avoid so as to not engage in the practice of law?
4. May a license holder add matters to the standard form to address matters that are covered in a standard addendum or other form?
5. May a license holder explain the forms without practicing law?

Appendix A



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

11-2-2015

NOTICE: Not For Use For Condominium Transactions

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

2. PROPERTY: The land, improvements and accessories are collectively referred to as the "Property".

- A. LAND: Lot _____ Block _____, _____
Addition, City of _____, County of _____,
Texas, known as _____
(address/zip code), or as described on attached exhibit.
- B. IMPROVEMENTS: The house, garage and all other fixtures and improvements attached to the above-described real property, including without limitation, the following **permanently installed and built-in items**, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas, mounts and brackets for televisions and speakers, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property owned by Seller and attached to the above described real property.
- C. ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and accessories.
- D. EXCLUSIONS: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession: _____

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

5. EARNEST MONEY: Upon execution of this contract by all parties, Buyer 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 of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

6. TITLE POLICY AND SURVEY:

- A. TITLE POLICY: Seller shall furnish to Buyer at Seller's Buyer's expense an owner policy of title insurance (Title Policy) issued by _____ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
- (1) Restrictive covenants common to the platted subdivision in which the Property is located.
 - (2) The standard printed exception for standby fees, taxes and assessments.
 - (3) Liens created as part of the financing described in Paragraph 3.
 - (4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.

Initialed for identification by Buyer _____ and Seller _____

TREC NO. 20-13

(Address of Property)

- (5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
- (6) The standard printed exception as to marital rights.
- (7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
- (8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements: (i) will not be amended or deleted from the title policy; or (ii) will be amended to read, "shortages in area" at the expense of Buyer Seller.
- 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 of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** If the existing survey or affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at Seller's Buyer's expense no later than 3 days prior to Closing Date.
- (2) Within _____ days after the effective date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.
- (3) Within _____ days after the effective date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.
- D. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; disclosed in the Commitment other than items 6A(1) through (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, 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 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. TITLE NOTICES:
- (1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.
- (2) MEMBERSHIP IN PROPERTY OWNERS ASSOCIATION(S): The Property is is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2A in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and all dedicatory instruments governing the establishment, maintenance, or operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instruments may be obtained from the county clerk. **You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to**

Initialed for identification by Buyer _____ and Seller _____

TREC NO. 20-13

change. Your failure to pay the assessments could result in enforcement of the association's lien on and the foreclosure of the Property.

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

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

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

a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions.”

7.PROPERTY CONDITION:

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

B. SELLER’S DISCLOSURE NOTICE PURSUANT TO §5.008, TEXAS PROPERTY CODE (Notice):
(Check one box only)

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

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

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

(Check one box only)

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

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

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

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

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

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

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

9. CLOSING:

- A. The closing of the sale will be on or before _____, 20____, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.
- B. At closing:
- (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
 - (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
 - (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
 - (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.
 - (5) If the Property is subject to a residential lease, Seller shall transfer security deposits (as defined under §92.102, Property Code), if any, to Buyer. In such an event, Buyer shall deliver to the tenant a signed statement acknowledging that the Buyer has acquired the Property and is responsible for the return of the security deposit, and specifying the exact dollar amount of the security deposit.

10. POSSESSION:

- A. Buyer's Possession: 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, lease or other form has been promulgated by TREC for mandatory use.)**12. SETTLEMENT AND OTHER EXPENSES:**

- A. The following expenses must be paid at or prior to closing:
- (1) Expenses payable by Seller (Seller's Expenses):
 - (a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.
 - (b) Seller shall also pay an amount not to exceed \$_____ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.
 - (2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private

(Address of Property)

Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

- B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.
- 13. PRORATIONS:** Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.
- 14. CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds, if permitted by Seller's insurance carrier, and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.
- 15. DEFAULT:** If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If Seller fails to comply with this contract, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.
- 16. MEDIATION:** It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.
- 17. ATTORNEY'S FEES:** A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.
- 18. ESCROW:**
- A. ESCROW: The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.
- 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.

(Address of Property)

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 applicable law, or if Seller fails to deliver an affidavit 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		To Seller	
at:	_____	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"/> 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 Reservation of Oil, Gas and Other Minerals | <input type="checkbox"/> Other (list): _____ |
| <input type="checkbox"/> Addendum for "Back-Up" Contract | _____ |
| <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 of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within _____ days after the effective date of this contract (Option Period). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee will will not be credited to the Sales Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

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

Buyer's Attorney is: _____ Seller's Attorney is: _____

Phone: () _____ Phone: () _____

Fax: () _____ Fax: () _____

E-mail: _____ E-mail: _____

**EXECUTED the _____ day of _____, 20____ (EFFECTIVE DATE).
 (BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

 Buyer Seller

 Buyer Seller

The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate license holders. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 936-3000 (<http://www.trec.texas.gov>) TREC NO. 20-13. This form replaces TREC NO. 20-12.

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

_____ Other Broker Firm License No.	_____ Listing Broker Firm License No.
represents <input type="checkbox"/> Buyer only as Buyer's agent <input type="checkbox"/> Seller as Listing Broker's subagent	represents <input type="checkbox"/> Seller and Buyer as an intermediary <input type="checkbox"/> Seller only as Seller's agent

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

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

_____ Other Broker's Address Fax	_____ Listing Broker's Office Address Fax
-------------------------------------	--

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

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

_____ Selling Associate's Name License No.

_____ 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 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: _____ Date: _____

By: _____
 _____ Email Address

_____ Address Phone: (____) _____

_____ City State Zip Fax: (____) _____



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

THIRD PARTY FINANCING ADDENDUM

TO CONTRACT CONCERNING THE PROPERTY AT

(Street Address and City)

A. TYPE OF FINANCING AND DUTY TO APPLY AND OBTAIN APPROVAL: Buyer shall apply promptly for all financing described below and make every reasonable effort to obtain approval for the financing, including but not limited to furnishing all information and documents required by Buyer's lender. (Check applicable boxes):

- 1. Conventional Financing:
 - (a) A first mortgage loan in the principal amount of \$ _____ (excluding any financed PMI premium), due in full in _____ year(s), with interest not to exceed _____% per annum for the first _____ year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed _____% of the loan.
 - (b) A second mortgage loan in the principal amount of \$ _____ (excluding any financed PMI premium), due in full in _____ year(s), with interest not to exceed _____% per annum for the first _____ year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed _____% of the loan.

- 2. Texas Veterans Loan: A loan(s) from the Texas Veterans Land Board of \$ _____ for a period in the total amount of _____ years at the interest rate established by the Texas Veterans Land Board.

- 3. FHA Insured Financing: A Section _____ FHA insured loan of not less than \$ _____ (excluding any financed MIP), amortizable monthly for not less than _____ years, with interest not to exceed _____% per annum for the first year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed _____% of the loan.

- 4. VA Guaranteed Financing: A VA guaranteed loan of not less than \$ _____ (excluding any financed Funding Fee), amortizable monthly for not less than _____ years, with interest not to exceed _____% per annum for the first _____ year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed _____% of the loan.

- 5. USDA Guaranteed Financing: A USDA-guaranteed loan of not less than \$ _____ (excluding any financed Funding Fee), amortizable monthly for not less than _____ years, with interest not to exceed _____% per annum for the first _____ year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed _____% of the loan.

- 6. Reverse Mortgage Financing: A reverse mortgage loan (also known as a Home Equity Conversion Mortgage loan) in the original principal amount of \$ _____ (excluding any financed PMI premium or other costs), with interest not to exceed _____% per annum for the first _____ year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed _____% of the loan. The reverse mortgage loan
 - will will not be an FHA insured loan.

Initialed for identification by Buyer _____ and Seller _____

TREC NO. 40-7
11-2-2015

(Address of Property)

B. APPROVAL OF FINANCING: Approval for the financing described above will be deemed to have been obtained when Buyer Approval and Property Approval are obtained.

1. Buyer Approval:

This contract is subject to Buyer obtaining Buyer Approval. If Buyer cannot obtain Buyer Approval, Buyer may give written notice to Seller within _____ days after the effective date of this contract and this contract will terminate and the earnest money will be refunded to Buyer. If Buyer does not terminate the contract under this provision, the contract shall no longer be subject to the Buyer obtaining Buyer Approval. Buyer Approval will be deemed to have been obtained when (i) the terms of the loan(s) described above are available and (ii) lender determines that Buyer has satisfied all of lender's requirements related to Buyer's assets, income and credit history.

This contract is not subject to Buyer obtaining Buyer Approval.

2. Property Approval: Property Approval will be deemed to have been obtained when the Property has satisfied lender's underwriting requirements for the loan, including but not limited to appraisal, insurability, and lender required repairs. If Property Approval is not obtained, Buyer may terminate this contract by giving notice to Seller before closing and the earnest money will be refunded to Buyer.

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

C. SECURITY: Each note for the financing described above must be secured by vendor's and deed of trust liens.

D. FHA/VA REQUIRED PROVISION: If the financing described above involves FHA insured or VA financing, it is expressly agreed that, notwithstanding any other provision of this contract, the purchaser (Buyer) shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise: (i) unless the Buyer has been given in accordance with HUD/FHA or VA requirements a written statement issued by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement Lender setting forth the appraised value of the Property of not less than \$ _____; or (ii) if the contract purchase price or cost exceeds the reasonable value of the Property established by the Department of Veterans Affairs.

(1) The Buyer shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation or the reasonable value established by the Department of Veterans Affairs.

(2) If FHA financing is involved, the appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or the condition of the Property. The Buyer should satisfy himself/herself that the price and the condition of the Property are acceptable.

(3) If VA financing is involved and if Buyer elects to complete the purchase at an amount in excess of the reasonable value established by the VA, Buyer shall pay such excess amount in cash from a source which Buyer agrees to disclose to the VA and which Buyer represents will not be from borrowed funds except as approved by VA. If VA reasonable value of the Property is less than the Sales Prices, Seller may reduce the Sales Price to an amount equal to the VA reasonable value and the sale will be closed at the lower Sales Price with proportionate adjustments to the down payment and the loan amount.

E. AUTHORIZATION TO RELEASE INFORMATION:

(1) Buyer authorizes Buyer's lender to furnish to Seller or Buyer or their representatives information relating to the status of the approval for the financing.

(2) Seller and Buyer authorize Buyer's lender, title company, and escrow agent to disclose and furnish a copy of the closing disclosures provided in relation to the closing of this sale to the parties' respective brokers and sales agents identified on the last page of the contract.

Buyer

Seller

Buyer

Seller

This form has been approved by the Texas Real Estate Commission for use with similarly approved or promulgated contract forms. Such approval relates to this form only. TREC forms are intended for use only by trained real estate license holders. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 936-3000 (<http://www.trec.texas.gov>) TREC No. 40-7. This form replaces TREC No. 40-6.

Appendix B

Document, Document, Document

Seller Otto is discussing listing his rental property for sale with his agent, Maynard.

OTTO

Okay, I am ready to list my rent house. Like I told you, I really want to get it sold as soon as possible, especially after my tenant leaves in a few months. I need to get \$134,500 to be able to make any money on it. Can you sell it for that?

MAYNARD

Sure. That sounds like a good price. I'll file the listing in MLS right away.

(hands Otto a stack of documents)

First though, I need you to sign some documents so we can get started.

OTTO

So what're all these?

MAYNARD

Well, the first one's just the Information About Broker Services. The real estate commission requires you to sign it. The second one's the listing agreement. It lists the terms of the listing agreement for my commission. It has a two-year term. It has our rights and responsibilities, too. Like for instance it states that I'll advertise the property in our local MLS, and I am authorized to put a keybox on the property.

OTTO

OK. What about my tenant?

MAYNARD

I'm sure your lease allows you, as landlord, to show the property if you want to sell it, so that's not an issue. But I'll call the tenant ahead of time and let 'em know I'm putting a keybox on it and they should keep it nice in case there are showings.

OTTO

And this next document?

MAYNARD

Oh, that's the Seller's Disclosure. You have to fill it out and sign it to give to any buyer. But since you don't live there, you can just put "unknown" for all the answers.

OTTO

(holding up next document)

This one?

MAYNARD

That's the Intermediary Relationship Notice. You sign it now, and then if I find a prospective buyer, and they want to use my brokerage, too, we'll represent you both and fast track the whole deal.

OTTO

And this Registration one?

MAYNARD

That's the Registration Agreement between the broker and owner. It allows me to register a prospect who might already be interested in buying the property. You can sign it now, and if I get a prospect, I'll put their name in the blank.

OTTO

And this one about Request for Mortgage Information?
Why do you need that?

MAYNARD

That's so I can get the mortgage payoff so we can let the title company know when we have a contract.

OTTO

I don't have my mortgage company information handy.
Can't I wait until we have a contract?

MAYNARD

Why don't you just sign it now and then you can give me the mortgage information when you have time. Then I won't have to bother you about it later.

Unauthorized Practice of Law

22 TAC 537.11

- (a) When negotiating contracts binding the sale, exchange, option, lease or rental of any interest in real property, a real estate licensee shall use only those contract forms promulgated by the Texas Real Estate Commission (the Commission) for that kind of transaction with the following exceptions:
 - (1) transactions in which the license holder is functioning solely as a principal, not as an agent;
 - (2) transactions in which an agency of the United States government requires a different form to be used;
 - (3) transactions for which a contract form has been prepared by a principal to the transaction or prepared by an attorney and required by a principal to the transaction; or
 - (4) transactions for which no standard contract form has been promulgated by the Commission, and the license holder uses a form prepared by an attorney at law licensed by this state and approved by the attorney for the particular kind of transactions involved or prepared by the Texas Real Estate Broker-Lawyer Committee (the committee) and made available for trial use by license holders with the consent of the Commission.
- (b) A license holder may not:
 - (1) practice law;
 - (2) offer, give or attempt to give legal advice, directly or indirectly;
 - (3) give advice or opinions as to the legal effect of any contracts or other such instruments which may affect the title to real estate;
 - (4) give opinions concerning the status or validity of title to real estate;
 - or
 - (5) attempt to prevent or in any manner whatsoever discourage any principal to a real estate transaction from employing a lawyer.
- (c) This section does not limit a license holder's fiduciary obligation to disclose to the license holder's principals all pertinent facts which are within the knowledge of the license holder, including such facts which might affect the status of or title to real estate.
- (d) A license holder may not undertake to draw or prepare documents fixing and defining the legal rights of the principals to a real estate transaction.
- (e) In negotiating real estate transactions, a license holder may prepare forms using only forms that have been approved and promulgated by the Commission or such forms as are otherwise permitted by these rules.
- (f) When filling in a form authorized for use by this section, the license holder may only fill in the blanks provided and may not add to or strike matter from such form, except that a license holder shall add factual statements and business details desired by the principals and shall strike only such matter as is desired by the principals and as is necessary to conform the instrument to the intent of the parties.

- (g) A license holder may not add to a promulgated contract form factual statements or business details for which a contract addendum, lease or other form has been promulgated by the Commission for mandatory use.
- (h) This section does not prevent the license holder from explaining to the principals the meaning of the factual statements and business details contained in an instrument so long as the license holder does not offer or give legal advice.
- (i) It is not the practice of law as defined in this Act for a real estate license holder to complete a contract form which is either promulgated by the Commission or prepared by the committee and made available for trial use by license holder with the consent of the Commission.
- (j) Contract forms prepared by the committee for trial use may be used on a voluntary basis after being approved by the Commission.
- (k) A contract form prepared by the committee and approved by the Commission to replace a previously promulgated form may be used by license holders on a voluntary basis before the effective date of rules requiring use of the replacement form.
- (l) When a transaction involves unusual matters that should be reviewed by legal counsel before an instrument is executed, or if the instrument must be acknowledged and filed of record, the license holder shall advise the principals that each should consult a lawyer of the principal's choice before executing the instrument.
- (m) A license holder may not employ, directly or indirectly, a lawyer nor pay for the services of a lawyer to represent any principal to a real estate transaction in which the license holder is acting as an agent. The license holder may employ and pay for the services of a lawyer to represent only the license holder in a real estate transaction, including preparation of the contract, agreement, or other legal instruments to be executed by the principals to the transactions.
- (n) A license holder shall advise the principals that the instrument they are about to execute is binding on them.

Appendix D

New TREC Rules

Significant New TREC rules effective January 1, 2016

Chapter 533, Practice and Procedure. This chapter was updated to comply with changes made to the APA and delegates decisions on Motions for Rehearing to the Commission's Enforcement Committee.

§535.1, Definitions. The definition of business entity was clarified, and definitions were added for trade association, Commission and Executive Director (formerly known as the Administrator).

§535.32, Attorneys in Fact. Use of power of attorney to represent another in a real estate transaction without being licensed was limited to 3 transactions per calendar year.

Chapter 535, Subchapter E, Requirements for Licensure. Revisions implemented new statutory education and examination requirements, including that an applicant for a broker's license must have completed the 30 hour qualifying Real Estate Brokerage course within two years of the application date and an applicant who fails the licensing examination three consecutive times must complete additional education before retaking the examination. Amendments also extended expedited license processing to active military service members and veterans and waived certain license and application fees, and decreased the waiting period after disciplinary action has been completed for good standing qualification.

Chapter 535, Subchapters F & G, Requirements for Education Providers, Courses and Instructors for Qualifying and Continuing Education. The revisions aligned the rules with statutory changes and clarified and improved performance and delivery standards for real estate and inspector education providers, courses and instructors. Significant changes include: all non-classroom courses are now classified as distance education and correspondence courses no longer have to be associated with an accredited college or university; an approved instructor is required to be available to timely answer students' questions and for providing answers and rationale for the grading of the written course work; final course examinations for all delivery methods for qualifying and for distance education for CE must be proctored; a license holder cannot turn a course completion certificate into the Commission until at least twice the number of hours for which course credit is given has elapsed since the student registered for the course for qualifying courses and until the number of hours for which course credit is given has elapsed for CE; the formula for satisfying exam passage rate benchmarks for providers was revised; and rules regarding provider and course advertising were strengthened for better consumer protection.

§535.91, Renewal of a Real Estate License. In order to renew following a sales agent's initial licensing period, the sales agent must complete an additional 90 classroom hours of qualifying courses and 8 hours of Legal Update I and II. An active duty military service member is permitted two additional years to renew a license.

§535.92, Continuing Education Requirements. License holders are required to take 18 hours of continuing education each license period, 8 of which must be the new Legal Update I and II courses promulgated by TREC. Designated brokers of entities that do not sponsor agents will no longer be required to take the Broker Responsibility course and up to 4 elective CE hours can be received each license period for attendance at a February Commission meeting.

§535.146, Maintaining Trust Money. A broker must provide an accounting to each beneficiary of trust money at least monthly, if there has been any activity in the account for that beneficiary.

§535.148, Receiving an Undisclosed Commission or Rebate. The Disclosure of Relationship with Residential Service Company form that is adopted by reference was revised.

Significant New TREC rules effective February 1, 2016

§531.18, Consumer Information (Brokers and Agents), §535.220, Professional Conduct and Ethics (Inspectors), and §535.401, Required Notices (ERW). A new mandatory Consumer Protection Notice was adopted and must be displayed by each TREC license holder in their offices and through a link on the homepage of each license holder's website.

§531.20, Information About Brokerage Services. A new mandatory Information About Brokerage Services form was adopted. It updates and clarifies the information provided to the public and requires that brokerage and agent contact information be provided. The IABS must still be given to a customer at the first substantive dialogue. Additionally, the license holder's website must have a link to the IABS on the homepage.

