

**Texas Real Estate Commission
Rules Adopted at the May 7, 2012 Meeting
Chapter 537 Professional Agreements and Standard Contract Forms**

**§537.43. Standard Contract Form
TREC No. 36-7.**

The Texas Real Estate Commission (TREC) adopts amendments to §537.43, concerning Standard Contract Form TREC No. 36-7, Addendum for Property Subject to Mandatory Membership in a Property Owners Association. The amendments to §537.43 are adopted without changes to the proposed rule text as published, but with changes to Form TREC No. 36-7, which was proposed for adoption by reference in the March 16, 2012, issue of the *Texas Register* (37 TexReg 1896).

The amendments to §537.43 adopt by reference Standard Contract Form TREC No. 36-7. The differences between the form as proposed and as adopted are as follows: a space was added to include the phone number of the property owners association on the line naming the association; Paragraph A is reformatted for clarity; in Paragraph E, the word "obtaining" is inserted between "of" and "the" in the last sentence; and "at closing" was changed to "prior to the Title Company ordering the information" so that the last clause reads "cost of obtaining the information prior to the Title Company ordering the information."

The revisions to the form as adopted do not change the nature or scope so much that it could be deemed a different form. The form as adopted does not affect individuals other than those contemplated by the form as proposed. The form as adopted does not impose more onerous requirements than the proposed version and does not materially alter the issues raised in the proposed form.

The amendments to the form include the following: Paragraph A.1 is revised; new Paragraph A.2 acknowledges recent statutory revisions which permit a buyer to obtain a resale certificate directly from a property owners association; and Paragraph A.3 (currently A.2) is unchanged. Paragraph C is revised to replace "resulting from" to "associated with" to track recent statutory changes to Chapter 207, Property Code. New Paragraph E provides that the seller authorizes the association to release

information such as the status of dues, special assessments, violations of covenants and restrictions, and a waiver of any right of first refusal if requested by the buyer, the title company, or any broker to the sale.

Amendments to the form also change the main telephone number and website address for TREC located in the box at the bottom of the form.

A previous proposal of the form was published in the December 30, 2011, issue of the *Texas Register* (36 TexReg 9176) for notice and comment. After reviewing numerous comments from the public, licensees, and representatives from the title industry, the Broker Lawyer Committee recommended additional revisions to the form to make it clear that a title company is authorized to obtain subdivision information from a property owners association only upon receipt of payment for the information from the party obligated to pay for the information under the contract. This additional change clarifies concerns about compensation to a title company in situations where the title company pays for the subdivision information on behalf of a party to the contract, is not reimbursed if the sale does not close, and is not authorized to obtain reimbursement from the earnest money before it is disbursed to a requesting party.

Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and a public member appointed by the governor. The commission received 14 comments on the form as proposed. The MetroTexas Association of Realtors commented on the proposed form.

The reasoned justification for the amendments to the form is the availability of current standard contract forms that, among other things, conform to new and recently revised statutory requirements.

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Comment: One commenter suggested adding a line for the property owner's association telephone number at the top of the form.

Response: The Commission agrees with the suggestion and has changed the form accordingly.

Comment: Three commenters suggested revising Paragraph E to make it clear that the party responsible for payment of the fees under the paragraph should pay the title company before the title company orders the information.

Response: The Commission agrees with the suggestions and has changed the form accordingly.

Comment: One commenter suggested that Paragraph C needs additional clarification whether "charges associated with the transfer of the property" includes the resale certificate.

Response: The Commission respectfully disagrees with the commenter as the beginning of Paragraph C provides that "Except as provided by Paragraphs A and D" which makes it clear that the documents covered in Paragraphs A and D are not covered by Paragraph C.

Comment: One commenter suggested changing Paragraph A.1 to provide various termination options depending on whether the seller's failure to provide the subdivision information is within or beyond seller's control.

Response: The Commission respectfully disagrees with the commenter as the seller is able to obtain the documentation prior to execution of the contract if desired. Additionally, the remedy for the buyer is the same regardless of the reason why the seller is not able to provide the subdivision information.

Comment: Two commenters suggested not requiring the buyer to deliver a copy of the subdivision information to the seller as the seller already has the information. In addition, one commenter questions whether leaving the time period open to terminate until prior to closing is too long. Finally, the commenter questions whether the buyer's ability to obtain the information should be cause for the buyer to terminate the contract.

Response: The Commission respectfully disagrees with the commenters' suggestions for the following reasons. The delivery of the information to the seller documents the buyer's compliance with the provisions in that paragraph and the date such compliance is obtained and starts the 3-day period for the buyer to decide whether to terminate the contract under the paragraph. Regarding the period to terminate, the entire clause read in context provides that the buyer has 3 days after buyer receives the information or prior to closing, whichever occurs first. Thus, the buyer has until closing to terminate only in cases when closing comes before the end of the 3-day period. Lastly, if the buyer cannot obtain the information due to factors beyond the buyer's control, the buyer is unable to determine what, if any, information in the subdivision information may be objectionable to the buyer as to cause the buyer to not want to purchase the property.

Comment: Another commenter questioned whether the buyer's ability to obtain the information should be cause for the buyer to terminate the contract.

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Response: Please see the response immediately above regarding this issue.

Comment: One commenter suggests adding a blank to document the date the buyer receives the documentation under Paragraphs A.1 and A.2.

Response: The commission respectfully disagrees with the suggestion as the form is an addendum that is attached to the contract which has an execution date. The addition of a receipt date could be confusing to users because users may erroneously believe that they will need to recirculate the contract form to show receipt of a document that may be delivered after the effective date of the contract.

Comment: Two commenters believe that a paragraph giving the buyer the right to obtain and pay for the information is unnecessary.

Response: The Commission respectfully disagrees as the paragraph regarding the buyer's access is a new statutory authorization in the Texas Property Code.

Comment: Two commenters believe that the 3-day period for the buyer to terminate the contract based on the subdivision information is too short and the period should be 5 days.

Response: The Commission respectfully disagrees with the commenter.

Comment: Two commenters agreed with the proposed amendments.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

§537.43. Standard Contract Form TREC No. 36-7. The Texas Real Estate Commission adopts by reference standard contract form TREC No. 36-7 approved by the Texas Real Estate Commission in 2012 for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 14, 2012.

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