

**RESIDENTIAL DISCLOSURES FROM SELLERS AND
LENDERS**

Written By:

RONALD J. WALKER
Texas Association of REALTORS®
1115 San Jacinto, Suite 200
Austin, Texas 78701
and
MICHAEL H. PATTERSON
PeirsonPatterson, LLP
2310 West Interstate 20, Suite 100
Arlington, Texas 76017-1668

Presented By:

MICHAEL H. PATTERSON

University of Houston Law Foundation
Advanced Real Estate Short Course
November 11-12, 2004 Houston
November 18-19, 2004 Dallas

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RESIDENTIAL DISCLOSURES FROM SELLERS

I. SCOPE OF ARTICLE. It appears to be well settled that generally, a seller of residential real estate is required to disclose known material defects to a prospective buyer. This article briefly summarizes: (1) statutory provisions affecting sellers of residential real estate related to disclosure obligations; and (2) interesting cases related to such disclosure duties.

II. THE SELLER'S DISCLOSURE NOTICE - §5.008, PROPERTY CODE.

A. Purpose. The most well-known statutory disclosure requirement related to residential real estate is found in §5.008, Property Code, which is commonly known as the "Seller's Disclosure Statute." Passed in the 1993 legislative session, §5.008 generally requires a seller of residential real estate to deliver a prescribed statutory notice to the buyer on or before the effective date of a contract to purchase. The notice asks the seller to disclose his awareness of any material defect or detrimental condition on the property. See §5.008 for the form of the notice and its required contents.

B. Application. Section 5.008 applies to a seller of improved residential real estate in Texas that contains not more than one dwelling unit. It applies to single family residential homes, townhomes, and condominiums.

C. Remedies. If the seller fails to timely deliver the notice, the buyer retains the statutory right to terminate the contract for any reason within 7 days after the date the buyer receives the notice. There are no other remedies in §5.008 for failure to deliver the notice. The author of the legislation intended to create a remedy of contract termination only and not a rescission right after closing (House Floor Debate on HB1081, 1993).

The buyer's statutory rights are included as contractual provisions in the standard single-family contract published by the Texas Real Estate Commission (TREC), which is used in sales of existing single-family homes.

D. Exemptions. There are 11 exemptions or types of transactions under which a seller is not required to deliver the prescribed statutory notice (Subsection (e)), most of which are rather narrow. The most common exemptions that seem to apply are: (a) sales from the mortgagee who has acquired the property through foreclosure or by deed in lieu of foreclosure; (b) sales by a fiduciary in an estate, guardianship, conservatorship, or trust; (c) sales to or

from any governmental entity; and (d) sales of new homes. If the value of the dwelling is less than 5% of the value of the property, the exemption under Subsection (e)(11) applies. Even though the sellers to which the exemptions may apply are not required to deliver the seller's disclosure notice under §5.008, the sellers are not relieved of any other statutory or common law duty to disclose known defects. Section 5.008 simply prescribes the form or mechanism of disclosure.

E. Other Forms. Section 5.008(a) provides that the seller must deliver the notice in a form that is prescribed in the statute or in a form that is substantially similar and, at a minimum, contains all of the items in the statutory form. The Texas Real Estate Commission publishes a form for the public's convenience that is identical to the statutory form (see appendix). The Texas Association of REALTORS® (TAR) publishes a form that is substantially similar to the statutory form but contains additional information and questions not in the statutory form (see appendix). This is disclosed at the top of the TAR form in bold. TAR updates its form from time to time based on information reported to it involving disputes, questions, and reported cases. There are a few other forms that are used in the real estate industry that appear to be in substantial compliance with the statute.

F. Commonly Asked Questions Related to the Seller's Disclosure Notice.

(1) Is a third-party relocation company required to complete and deliver the seller's disclosure notice? If the relocation company is the seller, then the answer appears to be yes since there is no exemption under §5.008 related to relocation companies. Many times relocation companies act more in the role of an asset manager and not the seller. Most relocation companies provide a packet of disclosure documents which include items such as the seller's disclosure notice prepared by the transferring employee and the inspection report that the relocation company may have received when it took title to the property.

(2) Does the seller's disclosure notice create any representations or warranties by the seller? The notice states in capitalized print at the top of the notice that the notice is not a warranty. All of the questions in the form that are related to the condition of any items in the property ask the seller if the seller is *aware* of any defect, malfunction, or detrimental condition. Either the seller is aware of a defect, malfunction, or detrimental condition or he is not aware. The statement of awareness does not equate to a representation that a particular item is or is not in need of repair. A particular item may be in need of repair of which the seller is not aware.

(3) *Must a seller provide a buyer with a copy of a previous inspection report that the seller may have obtained for himself or that was given to him in a prior transaction that fell through?* Section 5.008 requires the seller to disclose the conditions addressed in the notice to the best of the seller's knowledge and belief. If a seller has received an inspection report, one must assume that the seller is aware of its contents and would need to disclose the items that the report shows to be defective and which are addressed in the seller's disclosure notice. Section 5.008 does not state that the seller must provide a copy of such previous inspection reports to a buyer, but one must determine the best way to communicate to any subsequent purchaser the known defects (if any) that are cited in such previous inspection reports. The Texas Association of REALTORS®, as a matter of policy, suggests that the reports (not older than 4 years) be provided to subsequent purchasers (see Section 7 of the TAR seller's disclosure notice in the appendix). An interesting case that leads one to believe that prior inspection reports (or at least the contents of such reports) should be disclosed is *Smith v. Levine*, 911 S.W.2d 427 (Tex. App. – San Antonio 1995, writ denied), which is discussed briefly in the last section of this paper.

(4) *If the notice is not delivered timely and is given less than 7 days before closing does the buyer have any right to rescind or delay the transaction?* The author of the legislation intended that §5.008 would not give the buyer any right to rescind the transaction after closing for failing to receive the notice (House Floor Debate on HB1081, 1993). The buyer may elect to terminate at any time before closing. Additionally, a contract may give the buyer the right to extend closing in such a situation.

(5) *May a buyer waive the 7-day period to terminate for failing to receive the notice or for failing to timely receive the notice?* The author of the legislation intended that the bill would not prohibit a buyer from waiving the 7-day period *after the buyer receives the notice* (House Floor Debate on HB1081, 1993).

(6) *If the seller delivers the notice but mistakenly overlooks an item or omits an item, is the seller in compliance with §5.008?* The notice is to be completed to the best of the seller's knowledge. The author of the legislation did not intend that an immaterial omission should be a basis to argue that the notice was not delivered. Instead, the author believed that the courts would determine the materiality of any omissions to determine if there had been compliance (House Floor Debate on HB1081, 1993). Nonetheless, if the notice is timely provided but a material item is omitted, one may still exercise, contractual, common law, or other statutory remedies for failing to disclose a material defect or detrimental

condition. In one case, a buyer admitted receiving the seller's disclosure notice and admitted that he had noticed that the seller did not fill out some parts of the seller's disclosure notice; however the buyer never requested that the seller complete the form. (*Larsen v. Carlene Langford and Associates, Inc.* 41 S.W.3d 245 (Tex. App. – Waco 2001, no writ). While, in this cited case, this statement is not the key factor as to why the seller was not liable, it was noteworthy enough for the court to mention; which appears to be consistent with the legislative intent.

III. LEAD-BASED PAINT AND LEAD-BASED HAZARDS DISCLOSURES – 42 USC, §4852d AND 24 CFR PART 35 AND 40 CFR PART 745.

A. Purpose. In 1992 Congress passed the Residential Lead-Based Paint Hazard Reduction Act which instructed the Department of Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA) to develop rules for the disclosure of lead-based paint and lead-based paint hazards in target housing. The purpose of the Act and implementing regulations is to require the seller or landlord of any target housing to disclose the seller's or landlord's knowledge and any lead-based paint or lead-based paint hazard on the property.

B. Application. The disclosure requirement applies to all single-family and multi-family dwellings built before 1978 (target housing). "Target housing" refers to any housing built before 1978, but does not include housing for the elderly or persons with disability unless a child less than 6 years of age resides or is expected to reside in the housing. It does not include dwellings with no bedrooms. The disclosure requirements apply to apartments.

C. Remedies. Substantial penalties may be imposed on sellers, landlords, and their agents for non-compliance: fines of up to \$10,000 and civil liability of three times the damages suffered by an injured buyer or tenant.

D. Exemptions. Sales or leases of the following are exempt:

- (1) housing built after December 31, 1977;
- (2) sales at foreclosure;
- (3) leases of property which have been inspected and found to be lead-based paint free by an inspector certified by a federal or federally accredited state or tribal certification program;
- (4) short term leases of 100 days or less where no lease renewal or extension can occur;
- (5) renewal of existing leases, so long as no new information about lead-based paint on the premises has come into the possession of the landlord, and the

required information was disclosed when the lease was originally created;

(6) 0-bedroom dwellings; and

(7) housing designed for the elderly or disabled, but only if no children under the age of 6 reside or are expected to reside in such housing.

E. Required Action for Compliance. The essential elements of the lead-based paint disclosure rules require that *before a buyer or tenant is obligated under any contract to sell or lease:*

(1) the seller or landlord is to provide the buyer or tenant with an EPA-approved lead hazard information pamphlet currently titled, "Protect Your Family From Lead in Your Home;"

(2) the seller or landlord is to disclose to the buyer or tenant (and any agent in the transaction) the presence of any known lead-based paint and any known lead-based paint hazards in the property (including the basis for the determination that lead-based paint is present, the location of the paint and the condition of the painted surfaces);

(3) the seller or landlord is to provide the buyer or tenant with any records or reports pertaining to lead-based paint or lead-based paint hazards in the property (including common areas);

(4) the seller is to permit the buyer a 10-day period (unless another period is mutually agreed upon) to conduct a risk assessment or inspection for the presence of lead-based paint or lead-based paint hazards (applies to sales only); and

(5) each contract to sell or lease target housing is to contain a lead warning statement as prescribed by the rules and a written statement evidencing the seller's or landlord's compliance with the obligations under (1) through (4) above.

F. Forms. EPA publishes the pamphlet entitled "Protect Your Family From Lead in Your Home." Copies of the pamphlet are available from EPA (www.epa.gov), HUD (www.hud.gov), the Texas Assn. of REALTORS® (www.texasrealtors.com), or most real estate brokers (also, see appendix). The seller or landlord must provide this pamphlet to the buyer or tenant. The pamphlet contains general information about the hazards related to lead-based paint and useful consumer information related to lead-based paint.

The most commonly used addendum in residential sales is the form promulgated by the Texas Real Estate Commission known as the "Addendum for Seller's Disclosure on Information on Lead-Based Paint and Lead-Based Paint Hazards." The addendum contains the prescribed lead warning statement, the seller's disclosure of any known lead-based paint or hazards, the buyer's right to conduct an inspection, and a certification of compliance.

The giving of the pamphlet and compliance with the terms of addendum should result in the seller's compliance.

G. Commonly asked Questions.

(1) *Do the rules apply to the sale of an apartment complex in a commercial real estate transaction?* Yes.

(2) *Must a lender who obtained title to the property via a foreclosure comply with the rules when the lender subsequently sells the property?* Yes. The exemption concerning sales at foreclosure is limited to the foreclosure sale itself.

(3) *Must relocation companies comply with the rules?* If the relocation company is the seller, yes.

(4) *Will a buyer be automatically given 10 days to conduct inspections for lead-based paint in all transactions?* The right to conduct inspections for lead-based paint applies to sales of target housing. The 10-day period is negotiable, but if no other time is specified, the buyer will have 10 days to conduct inspections for lead-based paint before becoming obligated under the contract. The 10-day right does not apply to leases of target housing.

(5) *What is "lead-based paint" and a "lead-based paint hazard?"* "Lead-based paint" refers to paint or other surface coatings that contain lead equal to or in excess of 1 milligram per square centimeter or 0.5% by weight. "Lead-based paint hazard" refers any condition that causes exposure to lead from lead-contaminated dust, soil or paint that is deteriorated or present in accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health effects. (See Protect Your Family from Lead in Your Home.)

IV. NOTICE OF ADDITIONAL TAX LIABILITY – §5.010, PROPERTY CODE.

A. Purpose. Passed in the 1997 legislative session, §5.010, Property Code, requires the seller of vacant land to include a statutorily prescribed notice to the purchaser. In summary, the notice states that if the current tax assessment or appraisal of the land is determined by a method under which the taxes are assessed at less than market value, it is possible that the buyer may not qualify for the special method and taxes may increase after the buyer purchases the property. The notice also advises the buyer of the potential rollback tax penalty that may apply as the result of a change in use. See §5.010(a) for the text required to be placed in the notice. The notice must be included in the contract and in bold-face print. The notice does not appear in most standard forms because the exemption under Subsection (d) typically applies.

B. Application. Section 5.010 applies to a seller of vacant land located in Texas.

C. Remedies. If the seller fails to include the notice, the buyer is entitled to recover an amount equal to any additional taxes and interest that he is required to pay as a result of the transfer of the land or a change in use that occurs within 5 years of the date of transfer (Subsection (e)).

D. Exemptions. Subsections (b)-(d) contain exemptions or types of transactions under which a seller is not required to deliver the prescribed statutory notice. The exemptions under Subsection (b) are, for the most part, rather narrow, but do include transactions such as sales from a lender who acquired the property by foreclosure, sales from a trustee or executor, or sales from or to a governmental entity.

Subsection (c) provides that the notice is not required in transfers between certain family members and co-owners.

Subsection (d) contains the most common exemption. It provides that the notice is not required if a separate paragraph in the contract expressly provides for the payment of any additional ad valorem tax penalty and interest that come due because of a transfer of the land or a subsequent change in the use of the land.

V. SELLER'S DISCLOSURE REGARDING POTENTIAL ANNEXATION – §5.011, PROPERTY CODE.

A. Purpose. Passed in the 1999 legislative session, §5.011, Property Code, requires the seller of any interest in real estate to give the purchaser a written notice that reads substantially similar to the prescribed notice in Subsection (a). In summary, the notice states that if the property is located outside a city's limits, the property may now or later be located in the city's extraterritorial jurisdiction and could later be annexed. The notice advises the buyer to seek more information from any nearby city. See Subsection (a) for the text required to be placed in the notice (also, see appendix). The seller must provide the notice before the contract becomes binding and the notice may be included in the contract or as a separate notice. The standard forms published by the Texas Real Estate Commission and the Texas Association of REALTORS® contain the prescribed notice in the body of the forms.

B. Application. Section 5.011 applies to a seller of any interest in real property located in Texas.

C. Remedies. If the seller fails to timely deliver the notice, the buyer retains the statutory right to terminate the contract for any reason within 7 days from the date the buyer receives the notice or the date of closing, whichever is earlier. There are no other

remedies in §5.011 for failure to deliver the notice. Since the remedy mirrors the remedy found §5.008, Property Code, it follows that the intent of §5.011 is that it does not create any post-closing remedies.

D. Exemptions. Subsection (c) contains 10 exemptions or types of transactions under which a seller is not required to deliver the prescribed statutory notice, most of which are very narrow. The most common exemption is that the notice does not need to be provided in sales of property located wholly within a city's corporate boundaries (Subsection (c)(10)). Other common exemptions include sales from a lender who acquired the property by foreclosure, sales from trustee or executor, and sales from or to a governmental entity.

E. Safe Harbor. Subsection (d) provides that if the seller timely provides the notice, the seller has no duty to provide additional information regarding the possible annexation of the property.

VI. NOTICE OF POA OBLIGATIONS – §5.012, PROPERTY CODE.

A. Purpose. Passed in the 1999 legislative session, §5.012, Property Code, requires the seller of residential property that is located in a mandatory property owners' association to give the buyer a written notice that reads substantially similar to the prescribed notice in Subsection (a). In summary, the notice states that the property is located in a property owners' association (POA), that deed restrictions apply, that copies of the restrictions are available from the county clerk, that the buyer will be obligated to pay assessments to the POA, that the amounts of the assessments may change, and that the POA may have lien rights. See Subsection (a) for the text required to be placed in the notice (also, see appendix). The seller must provide the notice before the contract becomes binding and the notice may be included in the contract or as a separate notice. The standard forms published by the Texas Real Estate Commission for single family dwellings contain the prescribed notice in the text of the contract forms.

B. Application. Section 5.012 applies to a seller of residential real property in Texas that is subject to membership in a POA and that is comprised of not more than one dwelling unit.

C. Remedies. If the seller fails to timely deliver the notice, the buyer retains the statutory right to terminate the contract for any reason within 7 days from the date the buyer receives the notice or the date of closing, whichever is earlier. Subsection (e) provides that this remedy is the exclusive remedy for the seller's failure to provide the notice.

D. Exemptions. There are 10 exemptions or types of transactions under which a seller is not required to deliver the prescribed statutory notice, most of which are very narrow. The most common exemption is that the notice does not need to be provided in sales of condominiums, as Chapter 81 or 82 will govern similar disclosure requirements in the sale of condominiums. The other common exemptions are sales from a lender who acquired the property by foreclosure, sales from a trustee or executor, or sales from or to a governmental entity. See Subsection (c) for the complete list of exemptions.

VII. SELLER'S DISCLOSURE OF SUBSURFACE CONDITIONS - §5.013, PROPERTY CODE.

A. Purpose. Passed in the 1997 legislative session, §5.013, Property Code, requires the seller of unimproved property that will be used for residential purposes to give the buyer a written notice that discloses the location of a transportation pipeline (including a line that carries natural gas, natural gas liquids, synthetic gas, liquefied petroleum gas, petroleum, petroleum product, or hazardous substance). Most standard residential contract forms do not contain the notice as the exemption in Subsection (f) typically applies.

B. Application. Section 5.013 applies to a seller of unimproved property that will be used for residential purposes.

C. Remedies. If the seller fails to timely deliver the notice, the buyer retains the statutory right to terminate the contract for any reason within 7 days after the effective date of the contract. There are no other remedies provided in §5.013.

D. Exemptions. Subsection (f) provides that a seller is not required to give the notice if the seller is obligated under the contract to deliver a title commitment to the buyer and the buyer is entitled to terminate the contract if the buyer's objections to title, as permitted by the contract, are not cured before closing.

VIII. THE CONDOMINIUM RESALE CERTIFICATE, THE CONDOMINIUM DOCUMENTS, THE CONDOMINIUM INFORMATION STATEMENT, AND CONVERSION BUILDINGS – SUBCHAPTER D, CHAPTER 82, PROPERTY CODE.

A. Purpose. Passed in the 1993 legislative session, Subchapter D of Chapter 82 of the Property

Code provides for certain protections for buyers of condominium units. Chapter 82 of the Property Code is commonly known as Texas' version of the Uniform Condominium Act. It applies to most condominiums in Texas, although some of the condominiums that were established before January 1, 1994 may still be governed under Chapter 81 of the Property Code. The older condominiums may vote or may have voted to be governed by Chapter 82. (§82.002(a)).

(1) Sales of Newly Constructed Condominiums. Section 82.152(a), Property Code, requires a declarant (the developer) to prepare a "condominium information statement" before offering any units for sale. Subsection (c) requires the declarant to deliver the condominium information statement to a purchaser before entering into a contract to sell.

Section 82.153 sets forth the specific contents of the condominium information statement. Generally, the required information includes the declarant's contact information, a description of the condominium, a description of the development rights, the declaration, the association's bylaws, the association's rules, the association's budget, insurance information, and other information. See the appendix for the condominium information statement published by TAR.

Section 82.153(c) requires the declarant to amend the condominium information statement any time a material and substantial change in its contents occurs. The declarant must give notice to any purchaser of any such amendment.

If the condominium contains any conversion buildings, §82.154 requires the condominium information statement to contain additional information (related to the condition of the structural components, electrical items, and mechanical items).

(2) Sales of Existing Units (Resales). If an owner of a condominium unit is not a declarant, §82.157(a) requires the owner to give the buyer, before entering a contract to sell the unit, a current copy of the declaration, bylaws, any association rules, and a resale certificate.

The resale certificate must not be older than 3 months before the date it is delivered to the buyer. The resale certificate is issued by the association. Section 82.157(a) sets out the specific contents in the resale certificate. Generally, the resale certificate describes any right of refusal affecting the unit, the amount of any periodic assessment, any unpaid assessments, any approved capital expenditures, reserve amounts, outstanding judgments against the association, any pending suits against the association, and other information.

Section 82.157(b) sets out the time by which the association must respond to any request for a resale certificate (10 days) and the seller's rights if the association fails to issue the resale certificate.

B. Application. Subchapter D of Chapter 82, Property Code applies to a seller of any condominium unit in a condominium that is governed by Chapter 82, Property Code.

C. Remedies. Section 82.156 provides that a buyer may cancel the contract within 6 days after the buyer receives the required information (condominium information statement, declaration, bylaws, rules, resale certificate; whichever apply) if a buyer has not received the applicable information before entering into a contract to buy a unit *or* if the contract does not contain a bold or underlined statement in which the buyer acknowledges receipt of the information and which recommends that the buyer read the information.

Section 82.156(d) prohibits a seller from requiring a buyer to close if the buyer has not received the required information.

The statutory rights of cancellation are inserted as contractual provisions in the standard condominium contract form published by TREC, which is used in the sale of existing condominium units.

D. Exemptions. Section 82.151(b) contains 5 exemptions or types of transactions under which a seller is not required to deliver the information required under §82.152 or §82.157, all of which are very narrow (gratuitous dispositions, under court order, by a governmental body, foreclosure sales or deed in lieu of foreclosure, or when contract may be canceled at any time for any reason without penalty).

IX. NOTICE TO PURCHASERS OF PROPERTY IN A STATUTORY TAX DISTRICT - §49.452, WATER CODE.

A. Purpose. Originally passed in the 1989 legislative session, §49.452, Water Code, requires the seller of real property in a utility or other statutorily created tax district to deliver to the buyer a notice related to the tax rate, bonded indebtedness and standby fee of the district. Commonly, the notice is known as the “MUD Notice.” Subsection (f) requires the seller to provide the notice before the execution of a contract to purchase the property. The notice may be given separately or as part of the contract or as an addendum. Subsection (h) requires that a separate notice (but same type) must, at closing, be executed by the seller and buyer, acknowledged, and recorded. The standard TREC residential contract forms provide a notice that the seller may be required to deliver the notice under §49.452 if the property lies in such a district.

B. Application.

(1) *Types of Districts.* Section 49.452 applies to a seller of any real property that is located in a statutorily created district. An executory contract with a performance period longer than 6 months (contract for deed) is a sale. For Section 49.452 to apply:

(a) the district must provide or propose to provide water, sanitary sewer, drainage, and flood control protection or protection facilities or services or any of these facilities or services that are or will be financed with bonds payable in whole or part from taxes of the district or its standby fees;

(b) the district must provide or propose to provide such services or facilities to household or commercial users (excluding agricultural, irrigation, or industrial users); and

(c) the district includes less than all the territory in at least one county and which, if located within a city’s limits, includes less than 75% of the incorporated area or which is located outside the corporate area in whole or substantial part.

(2) *Form of Notice.* Subsections (b), (c), and (d) set forth the particular notice that the seller is required to deliver to the buyer. The applicable subsection and form depends on whether:

(a) the district is located in whole or part in the ETJ of one or more home-rule cities and not in the limits of a city (in such case, Subsection (b) and its prescribed form applies);

(b) the district is located in whole or in part in a city’s corporate boundaries (in such case, Subsection (c) and its prescribed form applies); or

(c) the district is not located in whole or part in the city’s corporate boundaries or the ETJ of one or more home-rule cities (in such case, Subsection (d) and its prescribed form applies).

For the most part the three notices are identical to each other except the notice under Subsection (b) informs the purchaser that the district is located in the ETJ of the applicable city and the notice under Subsection (c) informs the purchaser that the district is wholly or partly located in the applicable city. Each notice informs the purchaser that when a district is annexed, the district is to be dissolved and that the property owners will continue to pay district taxes until it is dissolved. When §49.452 first became law, only one form of notice was prescribed in the statute. In 1997, the statute was amended to provide potential purchasers with a notice of potential annexation by nearby cities (hence, the need for one of three different, but similar notices). In light of the statutory notice concerning annexation under §5.011, Property Code, one wonders whether the issue of annexation in this notice is now redundant or unnecessary (or perhaps it is just a little overkill) and whether the statute could be simplified.

Section 49.453 provides that each district must maintain, in its office, the particular form of notice applicable to properties in the district. Upon written request, the district must issue the notice with all information completed so that a seller may provide the completed notice to the buyer. The district is not required to provide the information orally. The district may charge a reasonable fee, not to exceed \$10, for the issuance of the notice that the district may deliver by regular mail. If an alternative delivery method is requested, the district may charge its costs to deliver the notice under the alternative method.

Section 49.453 also requires each district to file with the Texas Commission on Environmental Quality (TCEQ) the contact information for the district. One may find this information with some other information about district at <http://www3.tceq.state.tx.us/iwud/>.

Section 49.455(b)(9) also requires each district to file in the real property records of the county in which it is located the particular form of the notice that a seller in the district is required to provide a buyer with all information completed. There appears to be varying degrees of compliance by the districts, especially when the information has changed.

Section 49.455(j) requires each district to file the particular form of the notice that a seller in the district is required to provide a buyer with TCEQ. However, TCEQ does not make the notice form readily available on its website for the citizens of Texas to easily access. It appears that there may be little or varying degrees of compliance by the districts to submit the information to TCEQ, especially when the information changes, and little initiative for TCEQ to enforce this requirement or make the information accessible.

C. Remedies. If the seller fails to deliver the notice before execution of the contract, the buyer retains the statutory right to terminate the contract for any reason at any time before closing (Subsection (f)). If the seller later furnishes the notice at or before closing and the buyer closes, the buyer has waived all rights to terminate, to recover damages, or to seek other remedies under §49.452. Except as provided by Subsection (f), the buyer has the right under Subsections (n)-(q) to maintain a suit for damages if the notice is not delivered for: (1) costs related to the sale, interest, and attorney's fees; or (2) damages not greater than \$5,000 plus attorney's fees (but not both (1) and (2)). If the buyer closes and subsequently sells the property, the buyer waives all rights to any damages under §49.452 (Subsection (l)). The remedies under §49.452 are exclusive remedies available to the buyer. The buyer must bring a suit for damages not later than 90 days after the buyer receives the first tax notice from the district or within

4 years from the date of closing, whichever occurs first.

D. Exemptions. Section 49.452(a)(2) lists 4 types of transfers under which the notice to the purchaser is not required: (1) transfers under a lien foreclosure; (2) transfers by deed in cancellation of indebtedness of a lien; (3) transfers under a will or probate; and (4) transfers to a governmental entity.

X. NOTICE OF COASTAL AREA PROPERTY - §33.135, NATURAL RESOURCES CODE.

A. Purpose. Section 33.135, Natural Resources Code, requires the seller of property adjoining a tidally influenced water of the state to include in the contract for the sale of the property (or as a part of it) the notice about coastal area properties as prescribed in the statute. The notice advises the buyer that the property shares a boundary with the tidally influenced submerged land of the state and that the boundary is subject to change. The notice states that the seller has no knowledge of any prior fill. It advises the buyer that no structure or encumbrance may be placed on a submerged land of the state without permission. See Subsection (a) for the text of the required notice (also, see appendix for TREC form).

B. Application. Section 33.135 applies to a seller of any property that adjoins a tidally influenced water of the state, but does not include sales of minerals, leasehold, or security interests.

C. Remedies. If the contract does not contain the notice, the buyer may terminate the contract. Failure to deliver the notice before closing constitutes a violation of §17.46, Business and Commerce Code.

XI. NOTICE OF PROPERTY LOCATED SEAWARD OF INTRACOASTAL WATERWAY - §61.025, NATURAL RESOURCES CODE.

A. Purpose. Section 61.025, Natural Resources Code, requires the seller of an interest in property that is located seaward of the Gulf Intracoastal Waterway to include a prescribed statutory notice in the contract for sale.

The notice advises the buyer that the property is located seaward of the Intracoastal Waterway. It advises the buyer that if the property is close to a beach, then the public has a right of use to or over the area of any public beach. It advises the buyer that the extreme seaward boundary of natural vegetation that spread continuously inland customarily marks the landward boundary of the public easement, but if there is no visible vegetation line, the landward boundary of the easement is as provided in §61.016 and §61.017, Natural Resources Code. The notice informs the buyer

that state law prohibits the obstruction, barrier, restraint, or interference with the use of the public easement, including the placement of structures seaward of the line. See Subsection (a) for the text of the required notice (also, see appendix for TREC form).

B. Application. Section 61.025 applies to a seller of any property that located seaward of the Gulf Intracoastal Waterway, but does not include sales of minerals, leasehold, or security interests.

C. Remedies. If the contract does not contain the notice, the buyer may terminate the contract. Failure to deliver the notice before closing constitutes a violation of §17.46, Business and Commerce Code.

XII. MOLD REMEDIATION CERTIFICATE - §1958.154, OCCUPATIONS CODE.

A. Purpose. The 2003 Legislature added Chapter 1958 to the Occupations Code, which licenses and regulates mold assessors and mold remediators.

Section 1958.101 provides that a person may not conduct a mold assessment or remediate mold unless the person is licensed under Chapter 1958. There are two types of licenses; a mold assessment license and a mold remediation license. The Texas Department of Health (TDH) determines by rule the scope of mold-related work for which a license is required (§1958.101(b)).

Under Section 1958.154, the remediator, within 10 days after completing a remediation job, must give the property owner a certificate of mold remediation. The certificate will state that the remediation was completed in accordance with the assessment plan. The certificate will also indicate if the remediator is reasonably certain that the cause of the mold has been remediated so that mold will not likely return.

A property owner who sells his property must give the buyer a copy of each certificate that has been issued by a mold remediator (§1958.154(b)).

TDH is to adopt rules for the implementation of Chapter 1958.

TAR has included a request for such information in Section 5 of its seller's disclosure notice (see appendix).

B. Application. Section 1958.154(b) applies to a property owner who receives a certificate of mold remediation.

C. Remedies. Section 1958.251 provides that the Commissioner of Public Health may assess administrative penalties for persons who violate Chapter 1958 or a rule under that chapter. The

amount of the administrative penalty may not exceed \$5,000 for each violation (§1958.252).

XIII. NOTICE OF PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER - §13.257, WATER CODE.

A. Purpose. Section 13.257, Water Code, requires the seller of unimproved property that is located in a certificated service area of a utility service area to provide a buyer with prescribed statutory notice in the contract for sale.

The notice advises the buyer that the property is located in a water or service area of a particular utility service provider. It advises the buyer that no other utility is authorized to provide water or sewer service and that there may be costs that the buyer must pay before the buyer can receive service. See §13.257 for the text that must be used in the notice (also, see appendix for TREC form).

A utility service provider is a utility, a water supply or sewer service corporation, or a special utility district organized and operating under Chapter 65, Water Code.

The seller must provide the notice before the execution of a contract to sell the property. The notice may be made part of the contract or in an addendum to the contract.

At closing, the seller is to provide a second (but same) notice to the buyer, which the buyer is to acknowledge, and which is to be recorded. When completing the notice, one may rely on information in the map of the certificated service area filed in the real property records by the utility service provider (Subsection (h)).

B. Application. Section 13.257 applies to a seller of any *unimproved* property located in a certificated service area of a utility service provider.

C. Exemptions. There are 11 exemptions listed under Subsection (c), most of which are rather narrow. Most notably the following transactions are exempt: (a) sales to or from a governmental entity; (b) sales of property located in a city's limits; and (c) sales of property which receive service from a provider on the date of closing. See Subsection (c) for the complete list of exemptions.

D. Remedies. If the seller does not deliver the notice under §13.257, the buyer may terminate the contract.

If the seller provides the notice at or before closing and the buyer closes, it is conclusively presumed that the buyer has waived all remedies for the seller failing to timely deliver the notice (Subsection (e)).

Subsection (l) provides (except as provided by Subsection (e)) if the notice was not delivered in the sale, the buyer may seek: (a) all costs related to the purchase plus interest and attorney's fees; or (b) damages not to exceed \$5,000 plus attorney's fees (but not both). The remedies under Subsection (l) are exclusive remedies. Suit must be brought within the earlier of: (a) the 90th day after the buyer discovers the cost the buyer must pay to obtain service or the time the service provider requires to provide service; or (b) 4 years from the date of closing.

XIV. AGRICULTURAL DEVELOPMENT DISTRICTS - §60.063, AGRICULTURAL CODE.

A. Purpose. Section 60.063, Agricultural Code, requires the seller of property that is located in an Agricultural Development District to notify the buyer that the property is located in such a district. The notice must be given to the buyer before entering into a contract to sell the property. The notice may be given separately or as part of the contract or an addendum to the contract. At closing the buyer is to execute another copy of the notice, acknowledged it, and the notice is to be recorded in real property records.

An Agricultural Development District is a conservation and reclamation district under Section 59, Article XVI, Texas Constitution, to conserve and develop the natural resources of this state, including agricultural resources. It has powers, including taxation and development powers within the district as authorized by Chapter 60, Agricultural Code. According the Department of Agricultural website, as of May 14, 2004, the department has yet to receive any notice of the formation of any agricultural district.

B. Application. §60.063 applies to any seller that proposes to sell property located in an Agricultural Development District.

C. Remedies. §60.063 does not specify any specific remedies. Although, Subsection (c) does provide that a buyer may not maintain any action for damages by reason of the imposition of fees or assessments by a district, which leads one to wonder whether pre-closing remedies are available, such as contract termination and reimbursement of cost.

D. Exemptions. Subsection (e) provides that the seller is not required to provide the notice if the contract provides that the seller is to deliver a title commitment to the buyer and the buyer is entitled to terminate the contract because the property lies in an agricultural development district.

E. Forms. The district is required to file with the county clerk and the Department of Agriculture the notice that sellers are required to provide to purchasers under §60.063. Section 60.0631(b) sets out the specific requirements that must be in the notice to the purchaser (see appendix). Forms may be obtained from the Agricultural Department's website, currently at: http://www.agr.state.tx.us/eco/rural_eco_devo/ag_development_districts.htm.

XV. RCLA NOTICE IN NEW HOME SALES - §27.007, PROPERTY CODE.

A. Purpose. The Residential Construction Liability Act (Chapter 27, Property Code), governs actions against builders for construction defects. In 199, the Legislature added Section 27.007 that requires builders' contracts, which are subject to Chapter 27, to contain a notice to the buyer. The notice advises the buyer about the buyer's rights under Chapter 27. The notice must be in at least 10-point boldface print that reads substantially similar to the prescribed text found in §27.007(a) (also, see appendix). The notice must be next to the signature lines in the contract. The TREC contract forms used for new home sales contain the required notice.

B. Application. Section 27.007 applies to any contract that is subject to Chapter 27, Property Code, which applies to new construction contracts for residential properties.

C. Remedies. If a contract does not contain the required notice required, the claimant may recover from the contractor a civil penalty of \$500 in addition to any other remedy provided by this Chapter 27.

XVI. CONTRACTS FOR DEED – SUBCHAPTER D, CHAPTER 5, Property Code. Any person who sells residential property under a contract for deed must comply with Subchapter D, Chapter 5, Property Code. This paper does nothing with contracts for deed other than to mention that compliance with Subchapter D is necessary. There are several sections requiring the seller to disclose specific items to the buyer and several sections requiring the seller to regularly account to the buyer.

XVII. STATUTORY PROVISIONS PROVIDING FOR NO DUTY TO DISCLOSE

A. Certain Deaths. Section 5.008(c), Property Code provides that a seller has no duty to disclose information related to deaths on the property that are caused by natural causes, suicide, or accidents unrelated to the condition of the property.

That seems to leave only two other types of death in question; accidents related to the condition of the property and murder. Absent any statutory authority, common law guidance related to the disclosure of such deaths should otherwise apply.

B. AIDS of Prior Occupants. Section 5.008(c), Property Code also provides that a seller has no duty to disclose whether a previous occupant had, may have had, has, or may have AIDS, HIV related illnesses, or HIV infection.

At the time the statute was adopted this clarification was apparently necessary, even though it is now clear that persons with AIDS or HIV related illnesses fall within the disability protected class under fair housing laws.

C. Group Homes, Community Homes, or Family Homes. A community home (also known as a group home or family home) is a residential home that meets the definition of and requirements under the Community Homes for Disabled Persons Act under §123.001, Human Resources Code. Zoning and restrictive covenants may not be construed to prohibit the use of community homes (§202.003(b), Property Code and §123.003, Human Resources Code). In light of the fact that a disability is a protected class under fair housing laws and a group home is a permitted residential use, one may surmise that a seller should not discuss the existence of group homes in the subdivision or area. Further discussion may be found at *Deep East Texas Regional Mental Health & Mental Retardation Services v. Kinnear*, 877 S.W.2d 550 (Tex. App. – Beaumont 1994, no writ). In that case the court held that the legislature determined that a community home is not a business or commercial use with regard to restrictions. It further held that the legislature determined that no alleged damages for decreased property values near community homes are recoverable by residents.

D. Registered Sex Offenders. Section 62.045(e), Code of Criminal Procedure provides that a seller, landlord, builder, or broker of a single-family property does not have a duty to make a disclosure to a prospective buyer or tenant about persons who are registered sex offenders.

XVIII. NOTEWORTHY CASES INVOLVING CERTAIN DISCLOSURE ISSUES IN RESIDENTIAL SALES. The following is a brief list of a few cases involving disclosure issues by residential sellers. The holdings are quickly summarized. With the exception of the *Prudential v. Jefferson* case, the cited cases involve disclosure issues in residential sales. *Prudential v. Jefferson* is mentioned only because one defense to allegations of

concealment or failure to disclose typically is the “as is” clause. One should note that there are several cases involving commercial sales that have similar holdings which may provide useful defenses even in residential transactions.

A. *Pfeiffer v. Ebby Halliday Real Estate*, 747 S.W.2d 887 (Tex. App. – Dallas 1988, no writ). One cannot be held liable under DTPA for failure to disclose facts about which he does not know. The court must look for evidence of probative value to show that the seller had actual knowledge of any defective condition of the foundation before the buyer’s purchase. Repairs correct defects, not prove their continued known existence. Common knowledge of neighborhood conditions or conditions in the area or previous repairs does not establish knowledge of an actual or continued defect.

B. *O’Hearn v. Hogard*, 841 S.W.2d 135 (Tex. App.-Hous. [14th Dist.] 1992, no writ). In a cause of action involving a DTPA claim, the plaintiff must prove that (1) the seller or agent failed to disclose information concerning the property; (2) the information was known at the time of the transaction; (3) the seller or agent intended to induce the buyer into the transaction by withholding the information; and (4) the buyer would not have entered into the transaction if the information had been disclosed. The appropriate inquiry is whether the seller’s failure to disclose was a producing cause of the purchaser’s damages. A fact issue remained in this case because the sellers offered no summary judgment evidence indicating that their failure to disclose was not a producing cause.

C. *Prudential Insurance Co. of America v. Jefferson Associates Ltd.*, 896 S.W. 2d 156 (Tex. 1995). By agreeing to purchase property “as is,” a buyer agrees to make his own appraisal of the bargain and to accept the risk. The seller does not give any assurances, express or implied, concerning the value or condition of the property. A buyer is not bound by an “as is” agreement when: (1) he is induced to buy it due to a fraudulent representation or concealment of information by the seller, or (2) the buyer is entitled to inspect the condition of the property but is impaired by the conduct of the seller.

A seller has a duty to disclose facts of which he has actual knowledge; a seller is not liable for failing to disclose information that he only should have known. A statement is not fraudulent unless the maker knew it was false when he made it or made it recklessly without knowledge of the truth.

D. *Smith v. Levine*, 911 S.W.2d 427 (Tex. App. – San Antonio 1995, writ denied). A prospective buyer obtained a written inspection report stating the foundation was defective. The prospective buyer

discussed the report with the owners but the owners did not obtain a copy. The court found the new owners knew the foundation was defective, told the subsequent purchaser that the house was in “excellent” condition, and failed to disclose the defective foundation. The “as is” provision was invalid as a matter of law.

E. *Kessler v. Fanning*, 953 S.W. 2d 515 (Tex. App. – Ft. Worth 1997, no writ). A seller answered “no” to questions in the seller’s disclosure notice related to improper drainage. In an oral conversation with the buyer, the seller acknowledged that he knew about a drainage problem, but later stated that it was not a problem.

Courts consider three factors in determining whether a statement is opinion or misrepresentation: (1) whether the statement is specific or vague; (2) the comparative knowledge of the buyer and seller; and (3) whether the representation concerns past or current event/condition or a future event/condition.

A seller is liable for affirmative misrepresentations; the seller has a duty to know whether an affirmative statement is true. Sellers do not have a duty to disclose material facts that merely should have been known.

F. *Erwin v. Smiley*, 975 S.W.2d 335 (Tex. App. – Eastland 1998, writ denied). The seller told buyer about previous termites but problem had been remedied. The buyer inspected before entering into a contract. The parties signed an “as-is” contract. After closing, the buyer discovered termites.

The appellate court held that the parties were similarly situated, the sale was arms-length, both parties were represented, and the “as is” clause was freely negotiated. The “as is” clause negated seller’s actions as the producing cause.

G. *Fernandez v. Schultz*, 15 S.W.3d 648 (Tex. App. – Dallas 2000, no writ). The court found that there was sufficient circumstantial evidence to establish that the seller had knowledge regarding termite problems. The seller was in the business of buying and selling houses and the court held him to be knowledgeable about signs of termite problems and therefore, the seller did and should have recognized the signs. The buyer’s inspection, even if deficient, did not relieve the seller of his liability. There can be more than one producing cause of injury to a consumer under the DTPA. The court reasoned that if the seller had disclosed the termite problems on the seller’s disclosure form, the buyer’s inspector would have inspected for termites more completely.

H. *Davis v. Estridge*, 85 S.W.3d 308 (Tex. App. – Tyler 2001, writ denied). Seller’s gave buyer a

seller’s disclosure notice that did not indicate any defects in the foundation or any awareness of a previous structural repair. Buyers later found a crack in the foundation but took no action to mitigate the damage. The seller’s admitted to having previously repaired a crack in the foundation, but did not disclose the prior repair in the seller’s disclosure notice believing it had been repaired. The seller’s failed to disclose a previous repair as required under §5.008, Property Code and therefore were liable to the buyers for the cost to repair.

Although the jury proportionately assigned 93% of the damages to the buyer for failing to mitigate, the court held that proportionate responsibility does not apply to statutory fraud. Damages that were awarded were limited to the cost of repair plus costs.

Rescission was not proper because the plaintiff failed to tender the value that they obtained from using the property for the time between the purchase and trial.

I. *Robbins v. Capozzi*, 100 S.W.3d 18 (Tex. App. – Tyler 2002, no writ). The buyer received a seller’s disclosure notice stating that the garage was in “working condition” and had “no known defects.” The buyer had never tried to park the car in the garage before closing. After closing, the buyer discovered that she could not maneuver her vehicle into the garage because of the configuration of the drive and garage.

The court held that seller made no misrepresentation of the garage’s condition. The seller had been able to park her car in the garage (albeit that her car was considerably smaller). The court found that “inconvenience” is not a defect. The court held that the seller had no duty to disclose material facts which would be discoverable by a buyer in the exercise of ordinary care and due diligence.

J. *Branton v. Wood*, 100 S.W.3d 645 (Tex. App. – Corpus Christi 2003, n.w.h.). Buyers bought a home that previous flooded. The home is located adjacent to the Guadalupe River. In a later flood, the home washed off its foundation and smashed into some trees. The base plate of the foundation had rotted, allegedly from prior flood damage. In the seller’s disclosure notice the seller’s disclosed the prior flooding and stated that “repairs were made totally after flooding occurred.” No evidence summary judgment was awarded to the sellers. The appellate court affirmed.

The court held that the buyer had to prove that the bottom plates were rotten because of damage sustained in the prior flood and that the damage was not repaired or that they were not repaired after the previous flood. The report failed to discount other plausible sources that may have caused the rot. Without such evidence, the court could not conclude that the statements were false, misleading, or deceptive.

K. *Bynum v. Prudential Residential Services, Ltd.* 129 S.W.3d 781 (Tex. App. – Houston [1st Dist.] 2004, petition for review filed). After moving in the buyers noticed problems that were all allegedly due to a faulty remodeling job. The issue was whether Prudential and the prior owners knew that the contractor had done a poor job in remodeling the home. The sale was “as is.”

The court held that the buyers could not have the “as is” clause set aside on grounds that the parties were not sophisticated, because the buyer was represented by a real estate agent, the buyer had bought and sold several properties, and the buyer was a manager of a salvage company that sold goods “as is.”

The court held that the buyers could not have the “as is” clause set aside on grounds that the clause was inconspicuous and part of the boiler-plate provisions because the buyer was aware that he was purchasing the property “as is.”

The evidence did not establish that Prudential or the prior homeowners had actual knowledge that the remodeling was performed without obtaining necessary permits and therefore the evidence did not establish any concealment or misrepresentation.

Because §5.008, Property Code, requires only that the form be completed to the best of the seller’s belief at the time the notice is completed and signed, the buyer’s argument that the seller had an obligation to provide continuing updates is without merit.

L. *Sherman v. Elkowitz*, 130 S.W.3d 316 (Tex. App. – Houston [14th Dist.] 2004, no writ). Buyers discovered defects after moving in. The buyers discovered that the sellers had sued their prior owners for failing to disclose, allegedly, the same defects. Neither the alleged defects nor the lawsuit were disclosed. Buyers obtained a favorable verdict against the sellers for failing to disclose a defect, but not against the brokers.

As a matter of law, the prior lawsuit did not need to be disclosed in the seller’s disclosure notice because it was dismissed several years before the sellers put the property on the market. The court held that if the legislature intended for prior lawsuits to be listed, it could have included a phrase indicating this. In other parts of the form, the legislature asked for disclosure of certain conditions that occurred in the past (previous termites, previous flooding, etc.), but not with prior lawsuits.

APPENDIX - FORMS OF NOTICES AND DISLCOSURES



SELLER'S DISCLOSURE OF PROPERTY CONDITION

(SECTION 5.008, TEXAS PROPERTY CODE)

CONCERNING THE PROPERTY AT _____ (Street Address and City)

THIS NOTICE IS A DISCLOSURE OF SELLER'S KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED BY SELLER AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PURCHASER MAY WISH TO OBTAIN. IT IS NOT A WARRANTY OF ANY KIND BY SELLER OR SELLER'S AGENTS.

Seller [] is [] is not occupying the Property. If unoccupied, how long since Seller has occupied the Property? _____

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

- List of property items with checkboxes: Range, Dishwasher, Washer/Dryer Hookups, Security System, TV Antenna, Ceiling Fan(s), Central A/C, Plumbing System, Patio/Decking, Pool, Pool Equipment, Oven, Trash Compactor, Window Screens, Fire Detection Equipment, Cable TV Wiring, Attic Fan(s), Central Heating, Septic System, Outdoor Grill, Sauna, Pool Heater, Microwave, Disposal, Rain Gutters, Intercom System, Satellite Dish, Exhaust Fan(s), Wall/Window Air Conditioning, Public Sewer System, Fences, Spa, Hot Tub, Automatic Lawn Sprinkler System, Fireplace(s) & Chimney(Woodburning), Fireplace(s) & Chimney (Mock), Gas Lines (Nat./LP), Gas Fixtures, Garage: Attached/Not Attached, Garage Door Opener(s): Electronic/Control(s), Water Heater: Gas/Electric, Water Supply: City/Well/MUD/Co-op, Roof Type, Age (approx)

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

2. Are you (Seller) aware of any known defects/malfunctions in any of the following? Write Yes (Y) if you are aware, write No (N) if you are not aware.

- List of structural components with checkboxes: Interior Walls, Exterior Walls, Roof, Walls/Fences, Plumbing/Sewers/Septics, Other Structural Components (Describe), Ceilings, Doors, Foundation/Slab(s), Driveways, Electrical Systems, Floors, Windows, Basement, Sidewalks, Lighting Fixtures

Residential Disclosures from Sellers

Seller's Disclosure Notice Concerning the Property at _____ Page 2 10-25-93
(Street Address and City)

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

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

- | | | |
|--|---|--------------------------------------|
| ___ Active Termites (includes wood-destroying insects) | ___ Termite or Wood Rot Damage Needing Repair | ___ Previous Termite Damage |
| ___ Previous Termite Treatment | ___ Previous Flooding | ___ Improper Drainage |
| ___ Water Penetration | ___ Located in 100-Year Floodplain | ___ Present Flood Insurance Coverage |
| ___ Previous Structural or Roof Repair | ___ Hazardous or Toxic Waste | ___ Asbestos Components |
| ___ Urea-formaldehyde Insulation | ___ Radon Gas | ___ Lead Based Paint |
| ___ Aluminum Wiring | ___ Previous Fires | ___ Unplatted Easements |
| ___ Landfill, Settling, Soil Movement, Fault Lines | ___ Subsurface Structure or Pits | |

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

4. Are you (Seller) aware of any item, equipment, or system in or on the Property that is in need of repair? Yes (if you are aware) No (if you are not aware). If yes, explain (attach additional sheets as necessary). _____

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

- ___ Room additions, structural modifications, or other alterations or repairs made without necessary permits or not in compliance with building codes in effect at that time.
- ___ Homeowners' Association or maintenance fees or assessments.
- ___ Any "common area" (facilities such as pools, tennis courts, walkways, or other areas) co-owned in undivided interest with others.
- ___ Any notices of violations of deed restrictions or governmental ordinances affecting the condition or use of the Property.
- ___ Any lawsuits directly or indirectly affecting the Property.
- ___ Any condition on the Property which materially affects the physical health or safety of an individual.

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

Date Signature of Seller Date Signature of Seller

The undersigned purchaser hereby acknowledges receipt of the foregoing notice.

Date Signature of Purchaser Date Signature of Purchaser



TEXAS ASSOCIATION OF REALTORS®
SELLER'S DISCLOSURE NOTICE
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Section 5.008, Property Code requires a seller of residential property of not more than one dwelling unit to deliver a Seller's Disclosure Notice to a buyer on or before the effective date of a contract. This form complies with and contains additional disclosures which exceed the minimum disclosures required by the Code.

CONCERNING THE PROPERTY AT _____

THIS NOTICE IS A DISCLOSURE OF SELLER'S KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED BY SELLER AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE BUYER MAY WISH TO OBTAIN. IT IS NOT A WARRANTY OF ANY KIND BY SELLER, SELLER'S AGENTS, OR ANY OTHER AGENT.

Seller is is not occupying the Property. If unoccupied (by Seller), how long since Seller has occupied the Property? _____ or never occupied the Property

Section 1. The Property has the items marked below: (Mark Yes (Y), No (N), or Unknown (U).)

*Note: This notice does not establish which items will or will not be conveyed.
 The terms of a contract will determine which items will and will not be conveyed.*

Item	Y	N	U	Item	Y	N	U	Item	Y	N	U
Cable TV Wiring				Gas Lines (Nat/LP)				Pool Heater			
Carbon Monoxide Det.				Hot Tub				Public Sewer System			
Ceiling Fans				Intercom System				Rain Gutters			
Cooktop				Microwave				Range/Stove			
Dishwasher				Outdoor Grill				Roof/Attic Vents			
Disposal				Oven				Sauna			
Exhaust Fans				Patio/Decking				Spa			
Fences				Plumbing System				Trash Compactor			
Fire Detection Equip.				Pool				TV Antenna			
French Drain				Pool Equipment				Washer/Dryer Hookup			
Gas Fixtures				Pool Maint. Accessories				Window Screens			

Item	Y	N	U	Additional Information
Central A/C				<input type="checkbox"/> electric <input type="checkbox"/> gas number of units: _____
Wall/Window AC Units				number of units: _____
Attic Fan(s)				if yes, describe: _____
Evaporative Coolers				number of units: _____
Central Heat				<input type="checkbox"/> electric <input type="checkbox"/> gas number of units: _____
Other Heat				if yes describe: _____
Fireplace & Chimney				<input type="checkbox"/> woodburning _____ (no.) <input type="checkbox"/> mock _____ (no.) <input type="checkbox"/> other: _____
Carport				<input type="checkbox"/> attached <input type="checkbox"/> not attached
Garage				<input type="checkbox"/> attached <input type="checkbox"/> not attached
Garage Door Openers				number of units: _____ number of remotes: _____
Satellite Dish & Controls				<input type="checkbox"/> owned <input type="checkbox"/> leased from _____
Security System				<input type="checkbox"/> owned <input type="checkbox"/> leased from _____
Water Heater				<input type="checkbox"/> electric <input type="checkbox"/> gas <input type="checkbox"/> other: _____ number of units: _____
Water Softener				<input type="checkbox"/> owned <input type="checkbox"/> leased from _____
Underground Lawn Sprinkler				<input type="checkbox"/> automatic <input type="checkbox"/> manual areas covered: _____
Septic / On-Site Sewer Facility				if yes, attach Information About On-Site Sewer Facility (TAR-1407)

Residential Disclosures from Sellers

Concerning the Property at _____

Water supply provided by: city well MUD co-op unknown other: _____

Was the Property built before 1978? yes no unknown

(If yes, complete, sign, and attach TAR-1906 concerning lead-based paint hazards).

Roof Type: _____ Age: _____ (approximate)

Is there an overlay roof covering on the Property (shingles or roof covering placed over existing shingles or roof covering)? yes no unknown

Are you (Seller) aware of any of the items listed in this Section 1 that are not in working condition, that have defects, or are need of repair? yes no If yes, describe (attach additional sheets if necessary): _____

Section 2. Are you (Seller) aware of any defects or malfunctions in any of the following?: (Mark Yes (Y) if you are aware and No (N) if you are not aware.)

Item	Y	N	Item	Y	N	Item	Y	N
Basement			Floors			Sidewalks		
Ceilings			Foundation / Slab(s)			Walls / Fences		
Doors			Interior Walls			Windows		
Driveways			Lighting Fixtures			Other Structural Components		
Electrical Systems			Plumbing Systems					
Exterior Walls			Roof					

If the answer to any of the items in Section 2 is yes, explain (attach additional sheets if necessary): _____

Section 3. Are you (Seller) aware of any of the following conditions: (Mark Yes (Y) if you are aware and No (N) if you are not aware.)

Condition	Y	N	Condition	Y	N
Aluminum Wiring			Previous Roof Repairs		
Asbestos Components			Other Structural Repairs		
Diseased Trees: <input type="checkbox"/> oak wilt <input type="checkbox"/> _____			Radon Gas		
Endangered Species/Habitat on Property			Settling		
Fault Lines			Soil Movement		
Hazardous or Toxic Waste			Subsurface Structure or Pits		
Improper Drainage			Underground Storage Tanks		
Intermittent or Weather Springs			Unplatted Easements		
Landfill			Unrecorded Easements		
Lead-Based Paint or Lead-Based Pt. Hazards			Urea-formaldehyde Insulation		
Encroachments onto the Property			Water Penetration		
Improvements encroaching on others' property			Wetlands on Property		
Located in 100-year Floodplain			Wood Rot		
Present Flood Insurance Coverage (If yes, attach TAR-1414)			Active infestation of termites or other wood- destroying insects (WDI)		
Previous Flooding into the Structures			Previous treatment for termites or WDI		
Previous Flooding onto the Property			Previous termite or WDI damage repaired		
Previous Fires			Termite or WDI damage needing repair		
Previous Foundation Repairs					

Residential Disclosures from Sellers

Concerning the Property at _____

If the answer to any of the items in Section 3 is yes, explain (attach additional sheets if necessary): _____

Section 4. Are you (Seller) aware of any item, equipment, or system in or on the Property that is in need of repair, which has not been previously disclosed in this notice? yes no If yes, explain (attach additional sheets if necessary): _____

Section 5. Are you (Seller) aware of any of the following (Mark Yes (Y) if you are aware. Mark No (N) if you are not aware.)

Y N

Room additions, structural modifications, or other alterations or repairs made without necessary permits or not in compliance with building codes in effect at the time.

Homeowners' associations or maintenance fees or assessments. If yes, complete the following:
Name of association: _____
Manager's name: _____ Phone: _____
Fees or assessments are: \$ _____ per _____ and are: mandatory voluntary
Any unpaid fees or assessment for the Property? yes (\$ _____) no
If the Property is in more than one association, provide information about the other associations below or attach information to this notice.

Any common area (facilities such as pools, tennis courts, walkways, or other) co-owned in undivided interest with others. If yes, complete the following:
Any optional user fees for common facilities charged? yes no If yes, describe: _____

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

Any lawsuits or other legal proceedings directly or indirectly affecting the Property.

Any death on the Property except for those deaths cause by: natural causes, suicide, or accident unrelated to the condition of the Property.

Any condition on the Property which materially affects the health or safety of an individual.

Any repairs or treatments, other than routine maintenance, made to the Property to remediate environmental hazards such as asbestos, radon, lead-based paint, urea-formaldehyde, or mold.
If yes, attach any certificates or other documentation identifying the extent of the remediation (for example, certificate of mold remediation or other remediation).

If the answer to any of the items in Section 5 is yes, explain (attach additional sheets if necessary): _____

Section 6. Do you (Seller) have a survey of the Property available for review?: yes no If yes, a copy of the survey is is not attached.

Residential Disclosures from Sellers

Concerning the Property at _____

Section 7. Within the last 4 years, have you (Seller) received any written inspection reports from persons who regularly provide inspections and who are either licensed as inspectors or otherwise permitted by law to perform inspections? yes no If yes, attach copies and complete the following:

Inspection Date	Type	Name of Inspector	No. of Pages

Note: A buyer should not rely on the above-cited reports as a reflection of the current condition of the Property. A buyer should obtain inspections from inspectors chosen by the buyer.

Section 8. Check any tax exemption(s) which you (Seller) currently claim for the Property:

- Homestead Senior Citizen Disabled Disabled Veteran Agricultural Wildlife Management
- Other: _____ Unknown

Section 9. Have you (Seller) ever received proceeds for a claim for damage to the Property (for example, an insurance claim or a settlement or award in a legal proceeding) and not used the proceeds to make the repairs for which the claim was made? yes no If yes, explain: _____

Seller acknowledges that the statements in this notice are true to the best of Seller's belief and that no person, including the broker(s), has instructed or influenced Seller to provide inaccurate information or to omit any material information.

Signature of Seller Date
Printed Name: _____

Signature of Seller Date
Printed Name: _____

NOTICES TO BUYER:

The Texas Department of Public Safety maintains a database that the public may search, at no cost, to determine if registered sex offenders are located in certain zip code areas. To search the database, visit www.txdps.state.tx.us. For information concerning past criminal activity in certain areas or neighborhoods, contact the local police department.

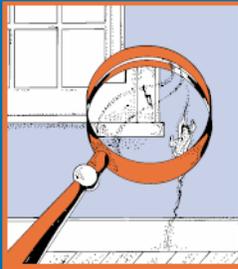
If you are basing your offers on square footage, measurements, or boundaries, you should have those items independently measured to verify any reported information.

This Seller's Disclosure Notice was completed by Seller as of the date signed. The brokers have relied on this notice as true and correct and have no reason to believe it to be false or inaccurate. YOU ARE ENCOURAGED TO HAVE AN INSPECTOR OF YOUR CHOICE INSPECT THE PROPERTY.

The undersigned Buyer acknowledges receipt of the foregoing notice.

Signature of Buyer Date
Printed Name: _____

Signature of Buyer Date
Printed Name: _____





Protect Your Family From Lead In Your Home

EPA United States Environmental Protection Agency

United States Consumer Product Safety Commission

United States Department of Housing and Urban Development

U.S. EPA Washington DC 20460
 U.S. CPSC Washington DC 20207
 U.S. HUD Washington DC 20410

EPA747-K-99-001
 September 2001

Are You Planning To Buy, Rent, or Renovate a Home Built Before 1978?

Many houses and apartments built before 1978 have paint that contains high levels of lead (called lead-based paint). Lead from paint, chips, and dust can pose serious health hazards if not taken care of properly. Federal law requires that individuals receive certain information before renting, buying, or renovating pre-1978 housing:



LANDLORDS have to disclose known information on lead-based paint and lead-based paint hazards before leases take effect. Leases must include a disclosure form about lead-based paint.



SELLERS have to disclose known information on lead-based paint and lead-based paint hazards before selling a house. Sales contracts must include a disclosure form about lead-based paint. Buyers have up to 10 days to check for lead.



RENOVATORS have to give you this pamphlet before starting work.

IF YOU WANT MORE INFORMATION on these requirements, call the National Lead Information Center at **1-800-424-LEAD (424-5323)**.

This document is in the public domain. It may be reproduced by an individual or organization without permission. Information provided in this booklet is based upon current scientific and technical understanding of the issues presented and is reflective of the jurisdictional boundaries established by the statutes governing the co-authoring agencies. Following the advice given will not necessarily provide complete protection in all situations or against all health hazards that can be caused by lead exposure.

IMPORTANT!

Lead from Paint, Dust, and Soil Can Be Dangerous If Not Managed Properly

- FACT:** Lead exposure can harm young children and babies even before they are born.
- FACT:** Even children who seem healthy can have high levels of lead in their bodies.
- FACT:** People can get lead in their bodies by breathing or swallowing lead dust, or by eating soil or paint chips containing lead.
- FACT:** People have many options for reducing lead hazards. In most cases, lead-based paint that is in good condition is not a hazard.
- FACT:** Removing lead-based paint improperly can increase the danger to your family.

If you think your home might have lead hazards, read this pamphlet to learn some simple steps to protect your family.

1

Lead Gets in the Body in Many Ways

Childhood lead poisoning remains a major environmental health problem in the U.S.

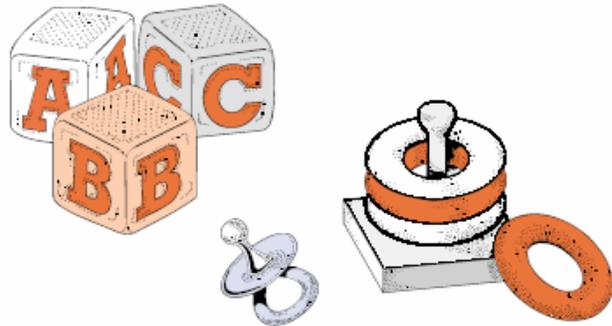
Even children who appear healthy can have dangerous levels of lead in their bodies.

People can get lead in their body if they:

- ◆ Breathe in lead dust (especially during renovations that disturb painted surfaces).
- ◆ Put their hands or other objects covered with lead dust in their mouths.
- ◆ Eat paint chips or soil that contains lead.

Lead is even more dangerous to children than adults because:

- ◆ Children's brains and nervous systems are more sensitive to the damaging effects of lead.
- ◆ Children's growing bodies absorb more lead.
- ◆ Babies and young children often put their hands and other objects in their mouths. These objects can have lead dust on them.



2

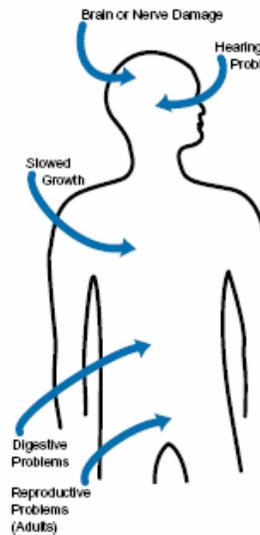
Lead's Effects

If not detected early, children with high levels of lead in their bodies can suffer from:

- ◆ Damage to the brain and nervous system
- ◆ Behavior and learning problems (such as hyperactivity)
- ◆ Slowed growth
- ◆ Hearing problems
- ◆ Headaches

Lead is also harmful to adults. Adults can suffer from:

- ◆ Difficulties during pregnancy
- ◆ Other reproductive problems (in both men and women)
- ◆ High blood pressure
- ◆ Digestive problems
- ◆ Nerve disorders
- ◆ Memory and concentration problems
- ◆ Muscle and joint pain



Lead affects the body in many ways.

Where Lead-Based Paint Is Found

In general, the older your home, the more likely it has lead-based paint.

Many homes built before 1978 have lead-based paint. The federal government banned lead-based paint from housing in 1978. Some states stopped its use even earlier. Lead can be found:

- ◆ In homes in the city, country, or suburbs.
- ◆ In apartments, single-family homes, and both private and public housing.
- ◆ Inside and outside of the house.
- ◆ In soil around a home. (Soil can pick up lead from exterior paint or other sources such as past use of leaded gas in cars.)

Checking Your Family for Lead

Get your children and home tested if you think your home has high levels of lead.

To reduce your child's exposure to lead, get your child checked, have your home tested (especially if your home has paint in poor condition and was built before 1978), and fix any hazards you may have. Children's blood lead levels tend to increase rapidly from 6 to 12 months of age, and tend to peak at 18 to 24 months of age.

Consult your doctor for advice on testing your children. A simple blood test can detect high levels of lead. Blood tests are usually recommended for:

- ◆ Children at ages 1 and 2.
- ◆ Children or other family members who have been exposed to high levels of lead.
- ◆ Children who should be tested under your state or local health screening plan.

Your doctor can explain what the test results mean and if more testing will be needed.

Identifying Lead Hazards

Lead-based paint is usually not a hazard if it is in good condition, and it is not on an impact or friction surface, like a window. It is defined by the federal government as paint with lead levels greater than or equal to 1.0 milligram per square centimeter, or more than 0.5% by weight.

Deteriorating lead-based paint (peeling, chipping, chalking, cracking or damaged) is a hazard and needs immediate attention. It may also be a hazard when found on surfaces that children can chew or that get a lot of wear-and-tear, such as:

- ◆ Windows and window sills.
- ◆ Doors and door frames.
- ◆ Stairs, railings, banisters, and porches.

Lead dust can form when lead-based paint is dry scraped, dry sanded, or heated. Dust also forms when painted surfaces bump or rub together. Lead chips and dust can get on surfaces and objects that people touch. Settled lead dust can re-enter the air when people vacuum, sweep, or walk through it. The following two federal standards have been set for lead hazards in dust:

- ◆ 40 micrograms per square foot ($\mu\text{g}/\text{ft}^2$) and higher for floors, including carpeted floors.
- ◆ 250 $\mu\text{g}/\text{ft}^2$ and higher for interior window sills.

Lead in soil can be a hazard when children play in bare soil or when people bring soil into the house on their shoes. The following two federal standards have been set for lead hazards in residential soil:

- ◆ 400 parts per million (ppm) and higher in play areas of bare soil.
- ◆ 1,200 ppm (average) and higher in bare soil in the remainder of the yard.

The only way to find out if paint, dust and soil lead hazards exist is to test for them. The next page describes the most common methods used.

5

Checking Your Home for Lead

Just knowing that a home has lead-based paint may not tell you if there is a hazard.

You can get your home checked for lead in one of two ways, or both:

- ◆ A paint **inspection** tells you the lead content of every different type of painted surface in your home. It won't tell you whether the paint is a hazard or how you should deal with it.
- ◆ A **risk assessment** tells you if there are any sources of serious lead exposure (such as peeling paint and lead dust). It also tells you what actions to take to address these hazards.

Hire a trained, certified professional who will use a range of reliable methods when checking your home, such as:

- ◆ Visual inspection of paint condition and location.
- ◆ A portable x-ray fluorescence (XRF) machine.
- ◆ Lab tests of paint, dust, and soil samples.

There are standards in place to ensure the work is done safely, reliably, and effectively. Contact your local lead poisoning prevention program for more information, or call **1-800-424-LEAD** for a list of contacts in your area.

Home test kits for lead are available, but may not always be accurate. Consumers should not rely on these tests before doing renovations or to assure safety.



6

What You Can Do Now To Protect Your Family

If you suspect that your house has lead hazards, you can take some immediate steps to reduce your family's risk:

- ◆ If you rent, notify your landlord of peeling or chipping paint.
- ◆ Clean up paint chips immediately.
- ◆ Clean floors, window frames, window sills, and other surfaces weekly. Use a mop or sponge with warm water and a general all-purpose cleaner or a cleaner made specifically for lead. REMEMBER: NEVER MIX AMMONIA AND BLEACH PRODUCTS TOGETHER SINCE THEY CAN FORM A DANGEROUS GAS.
- ◆ Thoroughly rinse sponges and mop heads after cleaning dirty or dusty areas.
- ◆ Wash children's hands often, especially before they eat and before nap time and bed time.
- ◆ Keep play areas clean. Wash bottles, pacifiers, toys, and stuffed animals regularly.
- ◆ Keep children from chewing window sills or other painted surfaces.
- ◆ Clean or remove shoes before entering your home to avoid tracking in lead from soil.
- ◆ Make sure children eat nutritious, low-fat meals high in iron and calcium, such as spinach and dairy products. Children with good diets absorb less lead.



7

Reducing Lead Hazards In The Home

Removing lead improperly can increase the hazard to your family by spreading even more lead dust around the house.

Always use a professional who is trained to remove lead hazards safely.



In addition to day-to-day cleaning and good nutrition:

- ◆ You can **temporarily** reduce lead hazards by taking actions such as repairing damaged painted surfaces and planting grass to cover soil with high lead levels. These actions (called "interim controls") are not permanent solutions and will need ongoing attention.
- ◆ To **permanently** remove lead hazards, you should hire a certified lead "abatement" contractor. Abatement (or permanent hazard elimination) methods include removing, sealing, or enclosing lead-based paint with special materials. Just painting over the hazard with regular paint is not permanent removal.

Always hire a person with special training for correcting lead problems—someone who knows how to do this work safely and has the proper equipment to clean up thoroughly. Certified contractors will employ qualified workers and follow strict safety rules as set by their state or by the federal government.

Once the work is completed, dust cleanup activities must be repeated until testing indicates that lead dust levels are below the following:

- ◆ 40 micrograms per square foot ($\mu\text{g}/\text{ft}^2$) for floors, including carpeted floors;
- ◆ 250 $\mu\text{g}/\text{ft}^2$ for interior windows sills; and
- ◆ 400 $\mu\text{g}/\text{ft}^2$ for window troughs.

Call your local agency (see page 11) for help with locating certified contractors in your area and to see if financial assistance is available.

8

Remodeling or Renovating a Home With Lead-Based Paint

Take precautions before your contractor or you begin remodeling or renovating anything that disturbs painted surfaces (such as scraping off paint or tearing out walls):

- ◆ **Have the area tested for lead-based paint.**
- ◆ **Do not use a belt-sander, propane torch, heat gun, dry scraper, or dry sandpaper** to remove lead-based paint. These actions create large amounts of lead dust and fumes. Lead dust can remain in your home long after the work is done.
- ◆ **Temporarily move your family** (especially children and pregnant women) out of the apartment or house until the work is done and the area is properly cleaned. If you can't move your family, at least completely seal off the work area.
- ◆ **Follow other safety measures to reduce lead hazards.** You can find out about other safety measures by calling 1-800-424-LEAD. Ask for the brochure "Reducing Lead Hazards When Remodeling Your Home." This brochure explains what to do before, during, and after renovations.

If you have already completed renovations or remodeling that could have released lead-based paint or dust, get your young children tested and follow the steps outlined on page 7 of this brochure.



If not conducted properly, certain types of renovations can release lead from paint and dust into the air.



Other Sources of Lead



While paint, dust, and soil are the most common lead hazards, other lead sources also exist.



◆ **Drinking water.** Your home might have plumbing with lead or lead solder. Call your local health department or water supplier to find out about testing your water. You cannot see, smell, or taste lead, and boiling your water will not get rid of lead. If you think your plumbing might have lead in it:

- Use only cold water for drinking and cooking.
- Run water for 15 to 30 seconds before drinking it, especially if you have not used your water for a few hours.

◆ **The job.** If you work with lead, you could bring it home on your hands or clothes. Shower and change clothes before coming home. Launder your work clothes separately from the rest of your family's clothes.

◆ Old painted **toys** and **furniture**.

◆ Food and liquids stored in **lead crystal** or **lead-glazed pottery or porcelain**.

◆ **Lead smelters** or other industries that release lead into the air.

◆ **Hobbies** that use lead, such as making pottery or stained glass, or refinishing furniture.

◆ **Folk remedies** that contain lead, such as "greta" and "azarcon" used to treat an upset stomach.

For More Information

The National Lead Information Center

Call **1-800-424-LEAD (424-5323)** to learn how to protect children from lead poisoning and for other information on lead hazards. To access lead information via the web, visit www.epa.gov/lead and www.hud.gov/offices/lead/.

For the hearing impaired, call the Federal Information Relay Service at **1-800-877-8339** and ask for the National Lead Information Center at **1-800-424-LEAD**.

EPA's Safe Drinking Water Hotline

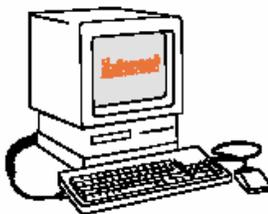
Call **1-800-426-4791** for information about lead in drinking water.

Consumer Product Safety Commission (CPSC) Hotline

To request information on lead in consumer products, or to report an unsafe consumer product or a product-related injury call **1-800-638-2772**, or visit CPSC's website at www.cpsc.gov.

Health and Environmental Agencies

Some cities, states, and tribes have their own rules for lead-based paint activities. Check with your local agency to see which laws apply to you. Most agencies can also provide information on finding a lead abatement firm in your area, and on possible sources of financial aid for reducing lead hazards. Receive up-to-date address and phone information for your local contacts on the Internet at www.epa.gov/lead or contact the National Lead Information Center at **1-800-424-LEAD**.



EPA Regional Offices

Your Regional EPA Office can provide further information regarding regulations and lead protection programs.

EPA Regional Offices

Region 1 (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont)

Regional Lead Contact
U.S. EPA Region 1
Suite 1100 (CPT)
One Congress Street
Boston, MA 02114-2023
1 (888) 372-7341

Region 2 (New Jersey, New York, Puerto Rico, Virgin Islands)

Regional Lead Contact
U.S. EPA Region 2
2890 Woodbridge Avenue
Building 209, Mail Stop 225
Edison, NJ 08837-3679
(732) 321-6671

Region 3 (Delaware, Maryland, Pennsylvania, Virginia, Washington DC, West Virginia)

Regional Lead Contact
U.S. EPA Region 3 (3WC33)
1650 Arch Street
Philadelphia, PA 19103
(215) 814-5000

Region 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Regional Lead Contact
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, GA 30303
(404) 562-8998

Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

Regional Lead Contact
U.S. EPA Region 5 (DT-8J)
77 West Jackson Boulevard
Chicago, IL 60604-3666
(312) 886-6003

Region 6 (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)

Regional Lead Contact
U.S. EPA Region 6
1445 Ross Avenue, 12th Floor
Dallas, TX 75202-2733
(214) 665-7577

Region 7 (Iowa, Kansas, Missouri, Nebraska)

Regional Lead Contact
U.S. EPA Region 7
(ARTD-RALI)
901 N. 5th Street
Kansas City, KS 66101
(913) 551-7020

Region 8 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

Regional Lead Contact
U.S. EPA Region 8
999 18th Street, Suite 500
Denver, CO 80202-2466
(303) 312-6021

Region 9 (Arizona, California, Hawaii, Nevada)

Regional Lead Contact
U.S. Region 9
75 Hawthorne Street
San Francisco, CA 94105
(415) 947-4164

Region 10 (Alaska, Idaho, Oregon, Washington)

Regional Lead Contact
U.S. EPA Region 10
Toxics Section WCM-128
1200 Sixth Avenue
Seattle, WA 98101-1128
(206) 553-1985

CPSC Regional Offices

Your Regional CPSC Office can provide further information regarding regulations and consumer product safety.

Eastern Regional Center
Consumer Product Safety Commission
201 Varick Street, Room 903
New York, NY 10014
(212) 620-4120

Western Regional Center
Consumer Product Safety Commission
1301 Clay Street, Suite 610-N
Oakland, CA 94612
(510) 637-4050

Central Regional Center
Consumer Product Safety Commission
230 South Dearborn Street, Room 2944
Chicago, IL 60604
(312) 353-8260

HUD Lead Office

Please contact HUD's Office of Healthy Homes and Lead Hazard Control for information on lead regulations, outreach efforts, and lead hazard control and research grant programs.

U.S. Department of Housing and Urban Development
Office of Healthy Homes and Lead Hazard Control
451 Seventh Street, SW, P-3206
Washington, DC 20410
(202) 755-1785

Simple Steps To Protect Your Family From Lead Hazards

If you think your home has high levels of lead:

- ◆ Get your young children tested for lead, even if they seem healthy.
- ◆ Wash children's hands, bottles, pacifiers, and toys often.
- ◆ Make sure children eat healthy, low-fat foods.
- ◆ Get your home checked for lead hazards.
- ◆ Regularly clean floors, window sills, and other surfaces.
- ◆ Wipe soil off shoes before entering house.
- ◆ Talk to your landlord about fixing surfaces with peeling or chipping paint.
- ◆ Take precautions to avoid exposure to lead dust when remodeling or renovating (call 1-800-424-LEAD for guidelines).
- ◆ Don't use a belt-sander, propane torch, heat gun, dry scraper, or dry sandpaper on painted surfaces that may contain lead.
- ◆ Don't try to remove lead-based paint yourself.

 **Recycled/Recyclable**
Printed with vegetable oil based inks on recycled paper (minimum 50% postconsumer) process chlorine free.



ADDENDUM FOR SELLER'S DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS AS REQUIRED BY FEDERAL LAW

CONCERNING THE PROPERTY AT _____ (Street Address and City)

A. LEAD WARNING STATEMENT: "Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-paint hazards is recommended prior to purchase."

NOTICE: Inspector must be properly certified as required by federal law.

B. SELLER'S DISCLOSURE:

- 1. PRESENCE OF LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS (check on box only):
(a) Known lead-based paint and/or lead-based paint hazards are present in the Property (explain):
(b) Seller has no actual knowledge of lead-based paint and/or lead-based paint hazards in the Property.
2. RECORDS AND REPORTS AVAILABLE TO SELLER (check one box only):
(a) Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the Property (list documents):
(b) Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the Property.

C. BUYER'S RIGHTS (check one box only):

- 1. Buyer waives the opportunity to conduct a risk assessment or inspection of the Property for the presence of lead-based paint or lead-based paint hazards.
2. Within ten days after the effective date of this contract, Buyer may have the Property inspected by inspectors selected by Buyer. If lead-based paint or lead-based paint hazards are present, Buyer may terminate this contract by giving Seller written notice within 14 days after the effective date of this contract, and the earnest money will be refunded to Buyer.

D. BUYER'S ACKNOWLEDGMENT (check applicable boxes):

- 1. Buyer has received copies of all information listed above.
2. Buyer has received the pamphlet Protect Your Family from Lead in Your Home.

E. BROKERS' ACKNOWLEDGMENT: Brokers have informed Seller of Seller's obligations under 42 U.S.C. 4852d to:

- (a) provide Buyer with the federally approved pamphlet on lead poisoning prevention; (b) complete this addendum; (c) disclose any known lead-based paint and/or lead-based paint hazards in the Property; (d) deliver all records and reports to Buyer pertaining to lead-based paint and/or lead-based paint hazards in the Property; (e) provide Buyer a period of up to 10 days to have the Property inspected; and (f) retain a completed copy of this addendum for at least 3 years following the sale. Brokers are aware of their responsibility to ensure compliance.

F. CERTIFICATION OF ACCURACY: The following persons have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Buyer Date Seller Date
Buyer Date Seller Date
Other Broker Date Listing Broker Date

The form of this addendum has been approved by the Texas Real Estate Commission for use only with similarly approved or promulgated forms of contracts. Such approval relates to this contract form only. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not suitable for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 1-800-250-8732 or (512) 459-6544 (http://www.trec.state.tx.us)

§5.010, PROPERTY CODE. NOTICE OF ADDITIONAL TAX LIABILITY. The required notice reads:

“If for the current ad valorem tax year the taxable value of the land that is the subject of this contract is determined by a special appraisal method that allows for appraisal of the land at less than its market value, the person to whom the land is transferred may not be allowed to qualify the land for that special appraisal in a subsequent tax year and the land may then be appraised at its full market value. In addition, the transfer of the land or a subsequent change in the use of the land may result in the imposition of an additional tax plus interest as a penalty for the transfer or the change in the use of the land. The taxable value of the land and the applicable method of appraisal for the current tax year is public information and may be obtained from the tax appraisal district established for the county in which the land is located.”

Typically, a contractual provision similar to the provision below, which appears in the TREC promulgated contracts for farm and ranch properties, is in the contract and excuses the seller from having to provide the statutory notice.

B. ROLLBACK TAXES: If this sale or Buyer’s use of the Property after closing results in the assessment of additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Buyer. If Seller’s change in use of the Property prior to closing or denial of a special use valuation on the Property claimed by Seller results in Assessments for periods prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

§5.011, PROPERTY CODE. SELLER'S DISCLOSURE REGARDING POTENTIAL ANNEXATION. The required notice must read substantially similar to the following:

“If the property that is the subject of this contract is located outside the limits of a municipality, 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.”

The notice appears in the body of the TREC promulgated single-family contract form as follows:

- (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.

§5.012, Property Code. NOTICE OF OBLIGATIONS RELATED TO MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION. The notice must read substantially similar:

“As a purchaser of property in the residential community in which this property is located, you are obligated to be a member of a property owners' association. Restrictive covenants governing the use and occupancy of the property and a dedicatory instrument governing the establishment, maintenance, and 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 instrument may be obtained from the county clerk.

NOTICE OF MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION CONCERNING THE
PROPERTY AT (street address) (name of residential community)

You are obligated to pay assessments to the property owners' association. 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.

Date: _____
Signature of Purchaser ”

The following notice appears in the TREC promulgated single-family contract form:

- (2) MANDATORY OWNERS' ASSOCIATION MEMBERSHIP: The Property is is not subject to mandatory membership in an owners' association. If the Property is subject to mandatory membership in an owners' association, Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community in which the Property is located, you are obligated to be a member of the owners' association. Restrictive covenants governing the use and occupancy of the Property and a dedicatory instrument governing the establishment, maintenance, and 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 instrument may be obtained from the county clerk. You are obligated to pay assessments to the owners' association. 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 the Property.



TEXAS ASSOCIATION OF REALTORS®

CONDOMINIUM INFORMATION STATEMENT

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Section 82.152, Property Code requires that a declarant (seller) of a new condominium must provide a condominium information statement to a prospective buyer. The condominium information statement must contain the information required by §82.153 and if the condominium contains a conversion building, the additional information required by §82.154, Property Code.

(1) Declarant's name: _____
Declarant's principal address: _____

(2) Name of condominium: _____
Principal address of condominium: _____

(3) Generally describe the condominium: _____
Types of units: _____
Maximum number of units: _____

(4) Number of additional units, if any, that may be included in the condominium:
Maximum number: _____ Minimum number: _____

(5) Briefly describe any development rights reserved by declarant: _____
Briefly describe any conditions relating to or limitations upon the exercise of development rights: _____

(6) Generally describe each lien, lease, or encumbrance on or affecting title to the condominium after conveyance by the declarant: _____

(7) Describe any unsatisfied judgments against the unit owners' association (the Association) and any pending suits to which the Association is a party or which are material to the land title and construction of the condominium of which declarant has actual knowledge: _____

Residential Disclosures from Sellers

Condominium Information Statement concerning _____

(8) Generally describe the insurance coverage provided for the benefit of unit owners: _____

(9) Fees or charges to be paid by unit owners for the use of common elements and other facilities related to the condominium:
Current fees: _____
Expected fees: _____

(10) Section 82.153, Texas Property Code requires copies of the following to be attached to this statement:
(a) the declaration and any amendments;
(b) Articles of Incorporation of the Association and any amendments;
(c) Bylaws of the Association and any amendments;
(d) Rules of the Association and any amendments;
(e) leases and contracts, other than loan documents, that declarant requires a buyer to sign at closing;
(f) projected pro forma budget for the Association for the first fiscal year of the Association following the date of the first conveyance to a buyer that: (i) complies with §82.153(b), Texas Property Code; (ii) identifies the person who prepared the budget; and (iii) states the budget's assumption concerning occupancy and inflation factors; and
(g) each written warranty provided by declarant.

(11) Section 82.154, Texas Property Code requires the following additional information to be attached to this statement if the condominium contains a conversion building:
(a) a dated statement by declarant, based on a report by an independent architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;
(b) a dated statement by the declarant of the expected useful life of each item reported in 11(a) or a statement that no representations are made in that regard; and
(c) a list of violations of building code or other governmental regulations of which the declarant has received notice and that have not been cured, together with the estimated cost of curing those violations.

Section 82.153(c), Property Code requires the declarant to promptly amend the condominium information statement to reflect material and substantial contents. If the change may adversely affect a prospective purchaser who has received a condominium information statement, the declarant shall furnish a copy of the amendment to the prospective purchaser before closing.

Declarant: _____ Date: _____

By: _____

Title: _____

Receipt acknowledge by: _____
Buyer Date

Buyer Date



CONDOMINIUM RESALE CERTIFICATE
PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

04-18-94

Condominium Certificate concerning Condominium Unit _____, in Building _____, of _____, a condominium project, located at _____ (Address), City of _____

County, Texas, on behalf of the condominium owners association (the Association) by the Association's governing body (the Board).

- A. The Declaration does or does not contain a right of first refusal or other restraint that restricts the right to transfer the Unit. If a right of first refusal or other restraint exists, see Section ____ of the Declaration.
B. The periodic common expense assessment for the Unit is \$ _____ per _____.
C. There is or is not a common expense or special assessment due and unpaid by the Seller to the Association. The total unpaid amount is \$ _____ and is for _____.
D. Other amounts are or are not payable by Seller to the Association. The total unpaid amount is \$ _____ and is for _____.
E. Capital expenditures approved by the Association for the next 12 months are \$ _____.
F. Reserves for capital expenditures are \$ _____; of this amount \$ _____ has been designated for _____.
G. The current operating budget of the Association is attached.
H. The amount of unsatisfied judgments against the Association is \$ _____.
I. There are or are not any suits pending against the Association. The nature of the suits is _____.

J. The Association does or does not provide insurance coverage for the benefit of unit owners as per the attached summary from the Association's insurance agent.

K. The Board has or has no knowledge of alterations or improvements to the Unit or to the limited common elements assigned to the Unit or any portion of the project that violate any provision of the Declaration, by-laws or rules of the Association. Known violations are: _____

L. The Board has or has not received notice from a governmental authority concerning violations of health or building codes with respect to the Unit, the limited common elements assigned to the Unit, or any other portion of the condominium project. Notices received are: _____

M. The remaining term of any leasehold estate that affects the condominium is _____ and the provisions governing an extension or renewal of the lease are: _____

N. The name, mailing address and telephone number of the Association's managing agent are:

(Name) _____ (Telephone Number) _____
(Mailing Address) _____

REQUIRED ATTACHMENTS:

- 1. Operating Budget
2. Insurance Summary

(Name of Condominium Owners Association)

NOTICE: The Certificate must be prepared no more than three months before the date it is delivered to Buyer.

By: _____

Received: _____ 19 _____

Title _____

Buyer _____

Mailing Address _____

Buyer _____

Date _____ Phone No. _____

The form of this certificate has been approved by the Texas Real Estate Commission for use only with similarly approved or promulgated forms of contracts. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. (04-94) TREC No. 32-0.

Residential Disclosures from Sellers

§49.452, WATER CODE. STATUTORY TAX DISTRICTS. The required notice is one of the following three notices, depending on the location of the district boundaries:

(b) The prescribed notice for districts located in whole or in part in the extraterritorial jurisdiction of one or more home-rule municipalities and not located within the corporate boundaries of a municipality shall be executed by the seller and shall read as follows:

"The real property, described below, that you are about to purchase is located in the _____ District. The district has taxing authority separate from any other taxing authority and may, subject to voter approval, issue an unlimited amount of bonds and levy an unlimited rate of tax in payment of such bonds. As of this date, the rate of taxes levied by the district on real property located in the district is \$ _____ on each \$100 of assessed valuation. If the district has not yet levied taxes, the most recent projected rate of tax, as of this date, is \$ _____ on each \$100 of assessed valuation. The total amount of bonds, excluding refunding bonds and any bonds or any portion of bonds issued that are payable solely from revenues received or expected to be received under a contract with a governmental entity, approved by the voters and which have been or may, at this date, be issued is \$ _____, and the aggregate initial principal amounts of all bonds issued for one or more of the specified facilities of the district and payable in whole or in part from property taxes is \$ _____.

"The district has the authority to adopt and impose a standby fee on property in the district that has water, sanitary sewer, or drainage facilities and services available but not connected and which does not have a house, building, or other improvement located thereon and does not substantially utilize the utility capacity available to the property. The district may exercise the authority without holding an election on the matter. As of this date, the most recent amount of the standby fee is \$ _____. An unpaid standby fee is a personal obligation of the person that owned the property at the time of imposition and is secured by a lien on the property. Any person may request a certificate from the district stating the amount, if any, of unpaid standby fees on a tract of property in the district.

"The district is located in whole or in part in the extraterritorial jurisdiction of the City of _____. By law, a district located in the extraterritorial jurisdiction of a municipality may be annexed without the consent of the district or the voters of the district. When a district is annexed, the district is dissolved.

"The purpose of this district is to provide water, sewer, drainage, or flood control facilities and services within the district through the issuance of bonds payable in whole or in part from property taxes. The cost of these utility facilities is not included in the purchase price of your property, and these utility facilities are owned or to be owned by the district. The legal description of the property you are acquiring is as follows:

(Date)

Signature of Seller

PURCHASER IS ADVISED THAT THE INFORMATION SHOWN ON THIS FORM IS SUBJECT TO CHANGE BY THE DISTRICT AT ANY TIME. THE DISTRICT ROUTINELY ESTABLISHES TAX RATES DURING THE MONTHS OF SEPTEMBER THROUGH DECEMBER OF EACH YEAR, EFFECTIVE FOR THE YEAR IN WHICH THE TAX RATES ARE APPROVED BY THE DISTRICT. PURCHASER IS ADVISED TO CONTACT THE DISTRICT TO DETERMINE THE STATUS OF ANY CURRENT OR PROPOSED CHANGES TO THE INFORMATION SHOWN ON THIS FORM.

"The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or prior to execution of a binding contract for the purchase of the real property described in such notice or at closing of purchase of the real property.

(Date)

Signature of Purchaser

"(Note: Correct district name, tax rate, bond amounts, and legal description are to be placed in the appropriate space.) Except for notices included as an addendum or paragraph of a purchase contract, the notice shall be executed by the seller and purchaser, as indicated. If the district does not propose to provide one or more of the specified facilities and services, the appropriate purpose may be eliminated. If the district has not yet levied taxes, a statement of the district's most recent projected rate of tax is to be placed in the appropriate space. If the district does not have approval from the commission to adopt and impose a standby fee, the second paragraph of the notice may be deleted. For the purposes of the notice form required to be given to the prospective purchaser prior to execution of a binding contract of sale and purchase, a seller and any agent, representative, or person acting on the seller's behalf may modify the notice by substitution of the words 'January 1, ___' for the words 'this date' and place the correct calendar year in the appropriate space."

Residential Disclosures from Sellers

(c) The prescribed notice for districts located in whole or in part within the corporate boundaries of a municipality shall be executed by the seller and shall read as follows:

"The real property, described below, that you are about to purchase is located in the _____ District. The district has taxing authority separate from any other taxing authority and may, subject to voter approval, issue an unlimited amount of bonds and levy an unlimited rate of tax in payment of such bonds. As of this date, the rate of taxes levied by the district on real property located in the district is \$ _____ on each \$100 of assessed valuation. If the district has not yet levied taxes, the most recent projected rate of tax, as of this date, is \$ _____ on each \$100 of assessed valuation. The total amount of bonds, excluding refunding bonds and any bonds or any portion of bonds issued that are payable solely from revenues received or expected to be received under a contract with a governmental entity, approved by the voters and which have been or may, at this date, be issued is \$ _____, and the aggregate initial principal amounts of all bonds issued for one or more of the specified facilities of the district and payable in whole or in part from property taxes is \$ _____.

"The district has the authority to adopt and impose a standby fee on property in the district that has water, sanitary sewer, or drainage facilities and services available but not connected and which does not have a house, building, or other improvement located thereon and does not substantially utilize the utility capacity available to the property. The district may exercise the authority without holding an election on the matter. As of this date, the most recent amount of the standby fee is \$ _____. An unpaid standby fee is a personal obligation of the person that owned the property at the time of imposition and is secured by a lien on the property. Any person may request a certificate from the district stating the amount, if any, of unpaid standby fees on a tract of property in the district.

"The district is located in whole or in part within the corporate boundaries of the City of _____. The taxpayers of the district are subject to the taxes imposed by the municipality and by the district until the district is dissolved. By law, a district located within the corporate boundaries of a municipality may be dissolved by municipal ordinance without the consent of the district or the voters of the district.

"The purpose of this district is to provide water, sewer, drainage, or flood control facilities and services within the district through the issuance of bonds payable in whole or in part from property taxes. The cost of these utility facilities is not included in the purchase price of your property, and these utility facilities are owned or to be owned by the district. The legal description of the property you are acquiring is as follows:

(Date)

Signature of Seller

PURCHASER IS ADVISED THAT THE INFORMATION SHOWN ON THIS FORM IS SUBJECT TO CHANGE BY THE DISTRICT AT ANY TIME. THE DISTRICT ROUTINELY ESTABLISHES TAX RATES DURING THE MONTHS OF SEPTEMBER THROUGH DECEMBER OF EACH YEAR, EFFECTIVE FOR THE YEAR IN WHICH THE TAX RATES ARE APPROVED BY THE DISTRICT. PURCHASER IS ADVISED TO CONTACT THE DISTRICT TO DETERMINE THE STATUS OF ANY CURRENT OR PROPOSED CHANGES TO THE INFORMATION SHOWN ON THIS FORM.

"The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or prior to execution of a binding contract for the purchase of the real property described in such notice or at closing of purchase of the real property.

(Date)

Signature of Purchaser

"(Note: Correct district name, tax rate, bond amounts, and legal description are to be placed in the appropriate space.) Except for notices included as an addendum or paragraph of a purchase contract, the notice shall be executed by the seller and purchaser, as indicated. If the district does not propose to provide one or more of the specified facilities and services, the appropriate purpose may be eliminated. If the district has not yet levied taxes, a statement of the district's most recent projected rate of tax is to be placed in the appropriate space. If the district does not have approval from the commission to adopt and impose a standby fee, the second paragraph of the notice may be deleted. For the purposes of the notice form required to be given to the prospective purchaser prior to execution of a binding contract of sale and purchase, a seller and any agent, representative, or person acting on the seller's behalf may modify the notice by substitution of the words 'January 1, _____' for the words 'this date' and place the correct calendar year in the appropriate space."

Residential Disclosures from Sellers

(d) The prescribed notice for districts that are not located in whole or in part within the corporate boundaries of a municipality or the extraterritorial jurisdiction of one or more home-rule municipalities shall be executed by the seller and shall read as follows:

"The real property, described below, that you are about to purchase is located in the _____ District. The district has taxing authority separate from any other taxing authority and may, subject to voter approval, issue an unlimited amount of bonds and levy an unlimited rate of tax in payment of such bonds. As of this date, the rate of taxes levied by the district on real property located in the district is \$ _____ on each \$100 of assessed valuation. If the district has not yet levied taxes, the most recent projected rate of tax, as of this date, is \$ _____ on each \$100 of assessed valuation. The total amount of bonds, excluding refunding bonds and any bonds or any portion of bonds issued that are payable solely from revenues received or expected to be received under a contract with a governmental entity, approved by the voters and which have been or may, at this date, be issued is \$ _____, and the aggregate initial principal amounts of all bonds issued for one or more of the specified facilities of the district and payable in whole or in part from property taxes is \$ _____.

"The district has the authority to adopt and impose a standby fee on property in the district that has water, sanitary sewer, or drainage facilities and services available but not connected and which does not have a house, building, or other improvement located thereon and does not substantially utilize the utility capacity available to the property. The district may exercise the authority without holding an election on the matter. As of this date, the most recent amount of the standby fee is \$ _____. An unpaid standby fee is a personal obligation of the person that owned the property at the time of imposition and is secured by a lien on the property. Any person may request a certificate from the district stating the amount, if any, of unpaid standby fees on a tract of property in the district.

"The purpose of this district is to provide water, sewer, drainage, or flood control facilities and services within the district through the issuance of bonds payable in whole or in part from property taxes. The cost of these utility facilities is not included in the purchase price of your property, and these utility facilities are owned or to be owned by the district. The legal description of the property you are acquiring is as follows:

(Date)

Signature of Seller

PURCHASER IS ADVISED THAT THE INFORMATION SHOWN ON THIS FORM IS SUBJECT TO CHANGE BY THE DISTRICT AT ANY TIME. THE DISTRICT ROUTINELY ESTABLISHES TAX RATES DURING THE MONTHS OF SEPTEMBER THROUGH DECEMBER OF EACH YEAR, EFFECTIVE FOR THE YEAR IN WHICH THE TAX RATES ARE APPROVED BY THE DISTRICT. PURCHASER IS ADVISED TO CONTACT THE DISTRICT TO DETERMINE THE STATUS OF ANY CURRENT OR PROPOSED CHANGES TO THE INFORMATION SHOWN ON THIS FORM.

"The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or prior to execution of a binding contract for the purchase of the real property described in such notice or at closing of purchase of the real property.

(Date)

Signature of Purchaser

"(Note: Correct district name, tax rate, bond amounts, and legal description are to be placed in the appropriate space.) Except for notices included as an addendum or paragraph of a purchase contract, the notice shall be executed by the seller and purchaser, as indicated. If the district does not propose to provide one or more of the specified facilities and services, the appropriate purpose may be eliminated. If the district has not yet levied taxes, a statement of the district's most recent projected rate of tax is to be placed in the appropriate space. If the district does not have approval from the commission to adopt and impose a standby fee, the second paragraph of the notice may be deleted. For the purposes of the notice form required to be given to the prospective purchaser prior to execution of a binding contract of sale and purchase, a seller and any agent, representative, or person acting on the seller's behalf may modify the notice by substitution of the words 'January 1, _____' for the words 'this date' and place the correct calendar year in the appropriate space."



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)
P.O. BOX 12188, AUSTIN, TX 78711-2188

12-05-94

ADDENDUM FOR
COASTAL AREA PROPERTY

ADDENDUM TO EARNEST MONEY CONTRACT BETWEEN THE UNDERSIGNED PARTIES
CONCERNING THE PROPERTY AT

(Location of Property)

IN ACCORDANCE WITH SECTION 33.135, TEXAS NATURAL RESOURCES CODE, THE FOLLOWING
NOTICE IS INCLUDED AS PART OF THE CONTRACT:

NOTICE REGARDING COASTAL AREA PROPERTY

- 1. The real property described in and subject to this contract adjoins and shares a common boundary with the tidally influenced submerged lands of the state. The boundary is subject to change and can be determined accurately only by a survey on the ground made by a licensed state land surveyor in accordance with the original grant from the sovereign. The owner of the property described in this contract may gain or lose portions of the tract because of changes in the boundary.
2. The seller, transferor, or grantor has no knowledge of any prior fill as it relates to the property described in and subject to this contract except:
3. State law prohibits the use, encumbrance, construction, or placing of any structure in, on, or over state-owned submerged lands below the applicable tide line, without proper permission.
4. The purchaser or grantee is hereby advised to seek the advice of an attorney or other qualified person as to the legal nature and effect of the facts set forth in this notice on the property described in and subject to this contract. Information regarding the location of the applicable tide line as to the property described in and subject to this contract may be obtained from the surveying division of the General Land Office in Austin.

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. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not suitable for complex transactions. (12-94) TREC No. 33-0.



**ADDENDUM FOR
PROPERTY LOCATED SEAWARD OF THE
GULF INTRACOASTAL WATERWAY**

TO CONTRACT CONCERNING THE PROPERTY AT

(Location of Property)

IN ACCORDANCE WITH SECTION 61.025, TEXAS NATURAL RESOURCES CODE, THE FOLLOWING STATEMENT IS INCLUDED AS PART OF THE CONTRACT:

The real property described in this contract is located seaward of the Gulf Intracoastal Waterway to its southernmost point and then seaward of the longitudinal line also known as 97 degrees, 12', 19" which runs southerly to the international boundary from the intersection of the centerline of the Gulf Intracoastal Waterway and the Brownsville Ship Channel. If the property is in close proximity to a beach fronting the Gulf of Mexico, the purchaser is hereby advised that the public has acquired a right of use or easement to or over the area of any public beach by prescription, dedication, or presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom.

The extreme seaward boundary of natural vegetation that spreads continuously inland customarily marks the landward boundary of the public easement. If there is no clearly marked natural vegetation line, the landward boundary of the easement is as provided by Sections 61.016 and 61.017, Natural Resources Code.

State law prohibits any obstruction, barrier, restraint, or interference with the use of the public easement, including the placement of structures seaward of the landward boundary of the easement. STRUCTURES ERECTED SEAWARD OF THE VEGETATION LINE (OR OTHER APPLICABLE EASEMENT BOUNDARY) OR THAT BECOME SEAWARD OF THE VEGETATION LINE AS A RESULT OF NATURAL PROCESSES ARE SUBJECT TO A LAWSUIT BY THE STATE OF TEXAS TO REMOVE THE STRUCTURES.

The purchaser is hereby notified that the purchaser should: (1) determine the rate of shoreline erosion in the vicinity of the real property; and (2) seek the advice of an attorney or other qualified person before executing this contract or instrument of conveyance as to the relevance of these statutes and facts to the value of the property the purchaser is hereby purchasing or contracting to purchase.

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 licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not suitable for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 1-800-250-8732 or (512) 459-6544 (<http://www.trec.state.tx.us>) TREC No. 34-1. This form replaces TREC No. 34-0.



APPROVED BY THE TEXAS REAL ESTATE COMMISSION (TREC)
P.O. BOX 12188, AUSTIN, TX 78711-2188

07-16-01

**ADDENDUM FOR
UNIMPROVED PROPERTY LOCATED IN A
CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER**

TO CONTRACT CONCERNING THE PROPERTY AT

(Location of Property)

**IN ACCORDANCE WITH SECTION 13.257, TEXAS WATER CODE, THE FOLLOWING
STATEMENT IS INCLUDED AS PART OF THE CONTRACT:**

NOTICE TO PURCHASERS

The real property, described above, that you are about to purchase is located in the water or sewer service area of _____ which is the utility service provider authorized by law to provide water or sewer service to your property. No other retail public utility is authorized to provide water or sewer service to your property. 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 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 purchaser 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 the notice or at closing of purchase of the real property.

(NOTE: Correct name of utility service provider is to be placed in the appropriate space.)
Except for notices included as an addendum to or paragraph of a purchase contract, the notice must be executed by the seller and purchaser, as indicated.

Buyer (Purchaser) Date Seller Date

Buyer (Purchaser) Date Seller Date

The form of this addendum has been approved by the Texas Real Estate Commission for use only with similarly approved or promulgated forms of contracts. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 1-800-250-8732 or (512) 459-6544 (<http://www.trec.state.tx.us>) TREC No. OP-M

01A TREC No. OP-M

§60.063, AGRICULTURAL CODE. AGRICULTURAL DEVELOPMENT DISTRICTS. The following is the notice that appears in the TREC promulgated contract forms for farm and ranch properties.

(6) TEXAS AGRICULTURAL DEVELOPMENT DISTRICT: The Property is is not located in a Texas Agricultural Development District.

§27.007, PROPERTY CODE. RCLA NOTICE IN NEW HOME SALES. The notice under §27.007 must, appear next to the signature lines, be printed in 10-point boldface type, and read substantially similar to:

"This contract is subject to Chapter 27 of the Texas Property Code. The provisions of that chapter may affect your right to recover damages arising from the performance of this contract. If you have a complaint concerning a construction defect arising from the performance of this contract and that defect has not been corrected through normal warranty service, you must provide the notice required by Chapter 27 of the Texas Property Code to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter 27 of the Texas Property Code and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code."

The following is the notice that appears in the TREC promulgated contract forms for new home sales.

This contract is subject to Chapter 27, Texas Property Code. The provisions of that chapter may affect your right to recover damages arising from the performance of this contract. If you have a complaint concerning a construction defect arising from the performance of this contract and that defect has not been corrected through normal warranty service, you must provide notice regarding the defect to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law. The notice must refer to Chapter 27, Texas Property Code, and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section 27.004, Texas Property Code.

Buyer

Buyer

Seller

Seller

RESIDENTIAL DISCLOSURES FROM LENDERS

**Michael H. Patterson
PeirsonPatterson, LLP
2310 West Interstate 20, Suite 100
Arlington, Texas 76017-1668
Telephone: 817.461.5500
Fax: 817.856.6090
Email:mike@ppdocs.com**

**University of Houston Law Foundation
Advanced Real Estate Short Course
November 11-12, 2004 – Dallas
November 18-19, 2004 Dallas**

Michael H. Patterson

Michael H. Patterson, P.C. is a partner of PeirsonPatterson, L.L.P. Mike's practice focuses on residential loan documentation and the regulations relating thereto. His firm regularly represents and prepares loan documents for residential lenders. He graduated from the University of Texas School of Law in 1979.

Thanks to:

- 1) The State Bar and Attorney Tommy Bastian for the invitation.
- 2) My partners, Chris and Bill Peirson, who always cover for me and so graciously correct me when I am wrong. I am seldom wrong, but never in doubt.
- 3) My office for tolerating me.
- 4) My wife, Debi, and our 4 sons (14, 17, 19 and 21) for sometimes tolerating me.
- 5) My clients that stand beside me as I learn from my mistakes.

Thank you all and God bless.

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RESIDENTIAL DISCLOSURES FROM LENDERS

I. INTRODUCTION AND SCOPE

This material covers disclosures required of a lender to be given to a borrower in a residential loan transaction involving a property located in Texas. The period from loan application through closing is the primary focus. There are some, but not all, post closing disclosures included. However, there are no collection, foreclosure or other non-performing loan disclosures covered. With a suggested length of 30 pages for this paper and 30 minutes for the presentation, it will be beyond the intended scope of this article and presentation to cover any case law or pending litigation for the subject matter. The focus here is to try to inventory the required disclosures and make available by a public domain internet site access to the actual legal authority and additional resources.

The covered disclosures could be arranged in a number a sequences: lien priority, time of delivery requirement, type of transaction, type of lender, ancillary vs document incorporated, amount of liability to attorney that screws it up, etc. These disclosures are arranged alpha numeric.

This is probably not an exclusive list of all Texas and federal residential loan disclosures, but what I think of as my top 100 favorites. A copy of this article with working links can be downloaded from our eLibrary at ppdocs.com.

II. TEXAS DISCLOSURES

A. Texas Statutes

1. Business & Commerce Code

a. Chapter 9-Secured Transactions

Section 9.334(h) provides:

(h) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, **if a recorded record of the mortgage so indicates.**

Except as otherwise provided in Subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before

the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage. (Emphasis added)

Comment: Does not take much. See paragraph k of EXHIBIT A-Residential Construction Contract Lender Addendum

Link:

<http://www.capitol.state.tx.us/statutes/docs/BC/content/htm/bc.001.00.000009.00.htm#9.334.00>

b. Chapter 26-Statute of Frauds

Section 26.02(e) provides:

(e) In a loan agreement subject to Subsection (b) of this section, the financial institution shall give notice to the debtor or obligor of the provisions of Subsections (b) and (c) of this section. The notice must be in a separate document signed by the debtor or obligor or incorporated into one or more of the documents constituting the loan agreement. The notice must be in type that is boldface, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous. The notice must state substantially the following:

"This written loan agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Debtor or Obligor _____
Financial Institution"

Comment: When signed by both debtor and lender, if the loan exceeds \$50,000, the written agreement can not be contradicted by oral agreement to the contrary. Note that the suggested format includes both the signature of the debtor and the lender.

Section 26.02(g) provides:

(g) All financial institutions shall conspicuously post notices that inform borrowers of the provisions of this section. The notices shall be located in such a

Residential Disclosures From Lenders

manner and in places in the institutions so as to fully inform borrowers of the provisions of this section. The Finance Commission of Texas shall prescribe the language of the notice.

Comment: See Exhibit B Notice of No Oral Agreements

Link:
<http://www.capitol.state.tx.us/statutes/docs/BC/content/htm/bc.003.00.000026.00.htm#26.02.00>

c. Chapter 39-Cancellation of Certain Consumer Transactions

Section 39.004 Notice By Merchant

If consumers enter into a covered obligation other than at the contractor's place of business, the consumers are entitled to receive a notice of right to rescind.

Link:
<http://www.capitol.state.tx.us/statutes/docs/BC/content/htm/bc.004.00.000039.00.htm#39.001.00>

2. Finance Code

a. Chapter 14-Consumer Credit Commissioner

Provides:

Sec.14.104. LENDER CONTRACTS.

A written contract of an authorized lender subject to regulation by the office must contain the name, mailing address, and **telephone number** of the office. (Emphasis added)

Link:
<http://www.capitol.state.tx.us/statutes/docs/FI/content/htm/fi.002.00.000014.00.htm#14.104.00>

b. Chapter 156-Mortgage Brokers

1) Sec. 156.004.Mortgage Broker/Loan Officer Disclosure

DISCLOSURE TO APPLICANT. At the time an applicant submits an application to a mortgage broker, the mortgage broker shall provide to the applicant a disclosure that specifies the nature of the relationship between applicant and broker, the duties the broker has to the applicant, and how the

mortgage broker will be compensated. The finance commission, by rule, shall promulgate a standard disclosure form to be used by the mortgage broker.

Comment: See 7 TAC §§ 80.9 below.

Disclosure:
<http://www.tsld.state.tx.us/mbankerdisclosure.htm>

(2) Sec. 156.303(13) Disclosure of Multiple Roles in A Consumer Real Estate Transaction

Sec. 156.303. DISCIPLINARY ACTION; CEASE AND DESIST ORDER.

(a) The commissioner may order disciplinary action against a licensed mortgage broker or a licensed loan officer when the commissioner, after a hearing, has determined that the person: ...

(13) acted in the dual capacity of a mortgage broker or loan officer and real estate broker, salesperson, or attorney in a transaction without the knowledge and written consent of the mortgage applicant or in violation of applicable requirements under federal law;

Disclosure:
<http://www.tsld.state.tx.us/disclosure2.htm>

c. Chapter 303-Optional Rate Ceilings

(1) Sec. 303.015 Variable Rate

(c) A variable rate agreement for credit extended primarily for personal, family, or household use must include the disclosures identified for variable rate contracts required by regulations issued by the Federal Reserve Board under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.), as amended, **except that if that Act does not apply because of the amount of the transaction**, the following disclosure must be included in a size equal to at least 10-point type that is boldface, capitalized, underlined, or otherwise set out from surrounding material so as to be conspicuous:

"NOTICE TO CONSUMER: UNDER TEXAS LAW, IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE

Residential Disclosures From Lenders

SUBJECT TO A FUTURE RATE AS HIGH AS 24 PERCENT PER YEAR." (Emphasis added)

Comment: Truth in Lending/Reg Z exempts transactions that would normally be covered if the credit extended exceeds \$25,000. However, if the credit extended is secured by real property or if the mortgaged property is the principal dwelling of the customer the exemption is negated. Consequently, this statute very seldom comes into play in traditional mortgage lending scenarios. However, it could be applicable in workouts where a part of the debt is left unsecured.

Link:
<http://www.capitol.state.tx.us/statutes/docs/FI/content/htm/fi.004.00.000303.00.htm#303.015.00>

d. Chapter 307-Collateral Protection Insurance

Sec. 307.052. CREDITOR DUTIES. (a) A creditor who requires collateral protection insurance that is paid for directly or indirectly by a debtor may place collateral protection insurance if:

(1) the debtor has entered into a credit transaction with the creditor for which a credit agreement exists;

(2) the credit agreement requires the debtor to maintain insurance on the collateral; and

(3) **a notice has been included in the credit agreement or a separate document provided to the debtor at the time the credit agreement is executed that states that:**

(A) **the debtor is required to:**

(i) **keep the collateral insured against damage in the amount the creditor specifies;**

(ii) **purchase the insurance from an insurer that is authorized to do business in this state or an eligible surplus lines insurer; and**

(iii) **name the creditor as the person to be paid under the policy in the event of a loss;**

(B) the debtor must, if required by the creditor, deliver to the creditor a copy of the policy and proof of the payment of premiums; and

(C) if the debtor fails to meet any requirement listed in Paragraph (A) or (B), the creditor may obtain collateral protection insurance on behalf of the debtor at the debtor's expense.....(Emphasis added)

Link:
<http://www.capitol.state.tx.us/statutes/docs/FI/content/htm/fi.004.00.000307.00.htm#307.052.00>

e. Chapter 342-Consumer Loans

(1) Sec. 342.152

§ 342.152. LICENSE DISPLAY. A license holder shall display a license at the place of business provided on the license.

Link:
<http://www.capitol.state.tx.us/statutes/docs/FI/content/htm/fi.004.00.000342.00.htm#342.152.00>

(2) Sec. 342.404

Sec. 342.404. INSURANCE NOTICE. (a) If insurance is required on a loan made under this chapter, the lender shall give to the borrower written notice that clearly and conspicuously states that:

(1) insurance is required in connection with the loan; and

(2) the borrower as an option may furnish the required insurance coverage through an insurance policy that is in existence and that is owned or controlled by the borrower or an insurance policy obtained from an insurance company authorized to do business in this state.

(b) If insurance requested or required on a loan made under this chapter is sold or obtained by a lender at a premium or rate of charge that is not fixed or approved by the commissioner of insurance, the lender shall notify the borrower of that fact. If notice is required under Subsection (a), the lender shall include that fact in the notice required by Subsection (a).

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(c) A notice required under this section may be:

- (1) a separate writing delivered with the loan contract; or
- (2) a part of the loan contract.

Link:

<http://www.capitol.state.tx.us/statutes/docs/FI/content/htm/fi.004.00.000342.00.htm#342.404.00>

(3) Sec. 342.451

Sec. 342.451. DELIVERY OF INFORMATION TO BORROWER. (a) When a loan is made under this chapter, the lender shall deliver to the borrower, or to one borrower if there is more than one, a copy of each document signed by the borrower, including the note or loan contract, and a written statement in English that contains:

- (1) the names and addresses of the borrower and the lender; and
- (2) any type of insurance for which a charge is included in the loan contract and the charge to the borrower for the insurance.

(b) If the note or loan contract shows the information required by Subsection (a), the written statement is not required.

Link:

<http://www.capitol.state.tx.us/statutes/docs/FI/content/htm/fi.004.00.000342.00.htm#342.451.00>

(4) Sec. 342.452

Sec. 342.452. RECEIPT FOR CASH PAYMENT. A lender shall give a receipt to a person making a cash payment on a loan.

Link:

<http://www.capitol.state.tx.us/statutes/docs/FI/content/htm/fi.004.00.000342.00.htm#342.452.00>

(5) Sec. 342.505

Sec. 342.505. DISCLOSURE OF AMOUNT FINANCED AND SCHEDULE

OF PAYMENTS. A lender may not take a promise to pay or loan obligation that does not disclose the amount financed and the schedule of payments, except for an open-end account.

Link:

<http://www.capitol.state.tx.us/statutes/docs/FI/content/htm/fi.004.00.000342.00.htm#342.505.00>

Comment:

See 7 TAC §§1.857 which provides:

(3) Amount Financed--The amount of money which is used, forborne, or detained and upon which interest is charged. The cash advance plus any other amounts that are financed by the creditor are included. Any points or other prepaid finance charges, excluding the administrative loan fee, that are not paid at closing and that are financed as part of the transaction are included in the amount financed. **This definition is only applicable for the purposes of this subchapter for computing earnings, deferments, maximum charges, and determining refunds of unearned interest. It is not intended to be analogous with the similar term that is used in the Truth-in-Lending Act (15 U.S.C. §1601 et seq.).** (Emphasis added)

Query: Does the “Amount Financed” referred to in Sec.342.505 mean the TIL/Reg Z definition or the definition provided in 7 TAC §§1.857, another “subchapter”?

Link:

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=7&pt=1&ch=1&rl=102](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=7&pt=1&ch=1&rl=102)

f. Chapter 343-Home Loans

Sec. 343.104. RESTRICTIONS ON SINGLE PREMIUM CREDIT INSURANCE. A lender may not offer any individual or group credit life, disability, or unemployment insurance on a prepaid single premium basis in conjunction with a

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home loan unless the following notice is provided to each applicant for the loan by hand delivery or mail to the applicant not later than the third business day after the date the applicant's application for a home loan is received:

INSURANCE NOTICE TO APPLICANT
You may elect to purchase credit life, disability, or involuntary unemployment insurance in conjunction with this mortgage loan. If you elect to purchase this insurance coverage, you may pay for it either on a monthly premium basis or with a single premium payment at the time the lender closes this loan. If you choose the single premium payment, the cost of the premium will be financed at the interest rate provided for in the mortgage loan.

This insurance is NOT required as a condition of closing the mortgage loan and will be included with the loan only at your request.

You have the right to cancel this credit insurance once purchased. If you cancel it within 30 days of the date of your loan, you will receive either a full refund or a credit against your loan account. If you cancel this insurance at any other time, you will receive either a refund or credit against your loan account of any unearned premium. **YOU MUST CANCEL WITHIN 30 DAYS OF THE DATE OF THE LOAN TO RECEIVE A FULL REFUND OR CREDIT.**

To assist you in making an informed choice, the following estimates of premiums are being provided along with an example of the cost of financing. The examples assume that the term of the insurance product is ____ years and that the interest rate is ____ percent (a rate that has recently been available for the type of loan you are seeking). **PLEASE NOTE THAT THE ACTUAL LOAN TERMS YOU QUALIFY FOR MAY VARY FROM THIS EXAMPLE.** "Total amount paid" is the amount that would be paid if you financed only the total insurance premium for a ____ year period and is equal to the amount you would have paid if you made all scheduled payments. This is NOT the total of payments on your loan.

CREDIT LIFE INSURANCE: Estimated premium of \$_____

DISABILITY INSURANCE: Estimated premium of \$_____

INVOLUNTARY UNEMPLOYMENT INSURANCE: Estimated premium of \$_____

TOTAL INSURANCE PREMIUMS: \$_____

TOTAL AMOUNT PAID: \$_____

Link:

<http://www.capitol.state.tx.us/statutes/docs/FI/content/htm/fi.004.00.000343.00.htm#343.104.00>

3. Insurance Code-Article 21.50 Mortgage Guaranty Insurance

Notice to Borrower

Sec. 1B. (a) A lender that requires a borrower to purchase mortgage guaranty insurance shall provide annually to the borrower a copy of the following written notice printed in at least 10-point bold-faced type:

"NOTICE OF RIGHT TO CANCEL PRIVATE MORTGAGE INSURANCE: If you currently pay private mortgage insurance premiums, you may have the right to cancel the insurance and cease paying premiums. This would permit you to make a lower total monthly mortgage payment and to possibly receive a refund of any unearned premiums on the policy. In most cases, you have the right to cancel private mortgage insurance if the principal balance of your loan is 80 percent or less of the current fair market appraised value of your home. If you want to learn whether you are eligible to cancel this insurance, please contact us at (address and telephone number of lender) or the Texas Department of Insurance consumer help line at (the appropriate toll-free telephone number)."

(b) If a lender receives a refund of an unearned mortgage guaranty insurance premium paid by a borrower, the lender shall remit the refund to the borrower not later than the 10th business day after the date on which the lender receives the refund.

(c) If federal law requires a lender to provide a borrower with a written notice containing substantially the same information required by Subsection (a) of this section, a lender who provides the notice required by federal

Residential Disclosures From Lenders

law within the period prescribed by federal law satisfies the notice requirement of Subsection (a) of this section. (Emphasis added)

Link:

<http://www.capitol.state.tx.us/statutes/docs/11/content/htm/i1.001.00.000021.00.htm#21.50.00>

Comment:

See AG Opinion JC-0045. May 11, 1999 which provided its summary as:

The private mortgage insurance notification requirements of federal law found in the Homeowners Protection Act of July, 1998, Pub. L. No. 105-216, 112 Stat. 902 (to be codified at 12 U.S.C. Sec 4903(a)(3), (b)) are consistent with those in state law found in Texas Insurance Code article 21.50, section 1B(a). A loan servicer should comply with the state requirements in Insurance Code article 21.5, 1B(a), and in doing so, satisfies the federal requisites.

Link:

<http://www.oag.state.tx.us/opinions/jc/JC0045.pdf>

Comment: Hmmm. I don't think this qualifies as a "safe-harbor". It is always nice when a state regulator waives a state requirement when a similar federal requirement is met, or a federal regulator lets a similar state requirement satisfy a federal requirement, but a state regulator waiving off a federal requirement leaves me with a little bit of an empty feeling.

4. Property Code

a. Sec. 11.008

CONFIDENTIAL INFORMATION IN REAL PROPERTY RECORDS.

(a) In this section, "instrument" means a deed, mortgage, or deed of trust.

(b) An instrument executed on or after January 1, 2004, transferring an interest in real property to or from an individual may not be recorded unless a notice appears on the first page of the instrument in 12-point boldfaced type or

12-point uppercase letters and reads substantially as follows:

NOTICE OF CONFIDENTIALITY RIGHTS:
IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

(c) The validity of an instrument as between the parties to the instrument and the notice provided by the instrument are not affected by a party's failure to include the notice required under Subsection (b).

(d) The county clerk may not reject an instrument presented for recording because the instrument contains or fails to contain a social security number or driver's license number. If the county clerk accepts an instrument for recording, the recording of the instrument creates a conclusive presumption that the requirements of this section have been met.

(e) The county clerk shall post a notice in the county clerk's office stating that instruments recorded in the real property or official public records or the equivalent of the real property or official public records of the county and executed on or after January 1, 2004:

(1) are not required to contain a social security number or driver's license number; and

(2) are public records available for review by the public.

(f) All instruments recorded under this section are subject to inspection by the public.

(g) Unless this section is cited in a law enacted after September 1, 2003, this section is the exclusive law governing the confidentiality of personal information contained in the real property or official public records or the equivalent of the real property or official public records of a county.

(h) To the extent that federal law conflicts with this section, an instrument must contain the information required by and must be filed in a manner that complies with federal law.

Link:

<http://www.capitol.state.tx.us/statutes/docs/PR/content/htm/pr.003.00.000011.00.htm#11.008.00>

Residential Disclosures From Lenders

Comment:

Please see Local Government Code Sec 191.007 (c) which provides:

(c) A clearly identifying heading, similar to the headings on most commercially supplied printed forms, must be placed at the top of the first page to identify the type or kind of legal paper.

In order to avoid additional recording fees the Notice of Confidentiality should be placed after the document title.

For Texas home equity loans the Texas Constitution Article 16, Sec.50 (a)(6)(Q)(vi) only requires:

the security instruments securing the extension of credit contain a disclosure that the extension of credit is the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution

Links:

<http://www.capitol.state.tx.us/txconst/sections/cn001600-005000.html>

<http://www.capitol.state.tx.us/statutes/docs/LG/content/htm/lg.006.00.000191.00.htm#191.007.00>

b. Chapter 27-Residential Construction Liability

Sec. 27.007. DISCLOSURE STATEMENT REQUIRED. (a) A written contract subject to this chapter must contain next to the signature lines in the contract a notice printed or typed in 10-point boldface type or the computer equivalent that reads substantially similar to the following:

"This contract is subject to Chapter 27 of the Texas Property Code. The provisions of that chapter may affect your right to recover damages arising from the performance of this contract. If you have a complaint concerning a construction defect arising from the performance of this contract and that defect has not been corrected through normal warranty service, you must provide the notice required by Chapter 27 of the Texas Property Code to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to

recover damages in a court of law or initiate arbitration. The notice must refer to Chapter 27 of the Texas Property Code and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code."

(b) If a contract does not contain the notice required by this section, the claimant may recover from the contractor a civil penalty of \$500 in addition to any other remedy provided by this chapter.

Comment: EXHIBIT A-Residential Construction Contract Lender Addendum.

Link:

<http://www.capitol.state.tx.us/statutes/docs/PR/content/htm/pr.004.00.000027.00.htm#27.007.00>

c. Chapter 41-Interests in Land

Sec. 41.007. HOME IMPROVEMENT CONTRACT. (a) A contract described by Section 41.001(b)(3) must contain the following warning conspicuously printed, stamped, or typed in a size equal to at least 10-point bold type or computer equivalent, next to the owner's signature line on the contract:

"IMPORTANT NOTICE: You and your contractor are responsible for meeting the terms and conditions of this contract. If you sign this contract and you fail to meet the terms and conditions of this contract, you may lose your legal ownership rights in your home. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW."

(b) A violation of Subsection (a) of this section is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under the provisions of the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

Added by Acts 1987, 70th Leg., ch. 116, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 41.005 by Acts 1989, 71st Leg., ch. 2, Sec. 16.01(30), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 4, eff. Sept. 1, 1993.

Comment: EXHIBIT A-Residential Construction Contract Lender Addendum.

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Link:

<http://www.capitol.state.tx.us/statutes/docs/PR/content/htm/pr.005.00.000041.00.htm#41.007.00>

d. Chapter 53-Mechanic's, Contractor's or Materialman's Lien

Coverage:

Sec. 53.251(a) of the Property Code provides:

This subchapter applies only to **residential construction projects**.
(Emphasis added)

Sec. 53.001(a)(10) of the Property Code provides:

"Residential construction project" means a project for the construction or repair of a new or existing residence, including improvements appurtenant to the residence, as provided by a **residential construction contract**. (Emphasis added)

Sec. 53.001(a)(9) of the Property Code provides:

"Residential construction contract" means a contract between an owner and a contractor in which the contractor agrees to construct or repair the owner's **residence**, including improvements appurtenant to the residence. (Emphasis added)

Sec. 53.001(a)(8) of the Property Code provides:

8) "Residence" means a **single-family house, duplex, triplex, or quadruplex or a unit in a multiunit structure used for residential purposes that is:**
(A) owned by one or more adult persons; and
(B) used or intended to be used as a dwelling by one of the owners. (Emphasis added)

(1) Sec. 53.255

Sec. 53.255. DISCLOSURE STATEMENT REQUIRED FOR

RESIDENTIAL CONSTRUCTION CONTRACT.

(a) Before a residential construction contract is executed by the owner, the original contractor shall deliver to the owner a disclosure statement described by this section.

(b) The disclosure statement must read substantially similar to the following: (See Exhibit C)

(c) The failure of a contractor to comply with this section does not invalidate a lien under this chapter, a contract lien, or a deed of trust.

Comment: See EXHIBIT C-Disclosure Statement for Residential Construction Contract Compliance Procedures and EXHIBIT D-Borrower's Acknowledgement of Texas Construction Compliance Procedures.

Link:

<http://www.capitol.state.tx.us/statutes/docs/PR/content/htm/pr.005.00.000053.00.htm#53.255.00>

(2) Sec. 53.257

Sec. 53.257. PROVISIONS RELATED TO CLOSING OF LOAN FOR CONSTRUCTION OF IMPROVEMENTS.

(a) If the owner is obtaining third-party financing for the construction of improvements under a residential construction contract, the lender shall deliver to the owner all documentation relating to the closing of the loan not later than one business day before the date of the closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the documentation to the owner or the lender may modify previously provided documentation on the date of closing.

(b) The lender shall provide to the owner the disclosure statement described by Section 53.255(b). The disclosure statement must be provided to the owner before the date of closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the disclosure statement at the closing. The lender shall retain a signed and dated copy of the disclosure statement with the closing documents.

(c) The failure of a lender to comply with this section does not invalidate a lien under this chapter, a contract lien, or a deed of trust.

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Link:

<http://www.capitol.state.tx.us/statutes/docs/PR/contntent/htm/pr.005.00.000053.00.htm#53.257.00>

(3) Sec. 53.258

Sec. 53.258. DISBURSEMENTS OF FUNDS.

(a) At the time the original contractor requests payment from the owner or the owner's lender for the construction of improvements under a residential construction contract, the original contractor shall provide to the owner a disbursement statement. The statement may include any information agreed to by the owner and the original contractor and must include at least the name and address of each person who subcontracted directly with the original contractor and who the original contractor intends to pay from the requested funds. The original contractor shall provide the disbursement statement:

(1) in the manner agreed to in writing by the owner and original contractor; or

(2) if no agreement exists, by depositing the statement in the United States mail, first class, postage paid, and properly addressed to the owner or by hand delivering the statement to the owner before the original contractor receives the requested funds.

(b) If the owner finances the construction of improvements through a third party that advances loan proceeds directly to the original contractor, the lender shall:

(1) obtain from the original contractor the signed disbursement statement required by Subsection (a) that covers the funds for which the original contractor is requesting payment; and

(2) provide to the owner a statement of funds disbursed by the lender since the last statement was provided to the owner.

(c) The lender shall provide to the owner the lender's disbursement statement and the disbursement statement the lender obtained from the contractor before the lender disburses the funds to the original contractor. The disbursement statements

may be provided in any manner agreed to by the lender and the owner.

(d) The lender is not responsible for the accuracy of the information contained in the disbursement statement obtained from the original contractor.

(e) The failure of a lender or an original contractor to comply with this section does not invalidate a lien under this chapter, a contract lien, or a deed of trust.

(f) A person commits an offense if the person intentionally, knowingly, or recklessly provides false or misleading information in a disbursement statement required under this section. An offense under this section is a misdemeanor. A person adjudged guilty of an offense under this section shall be punished by a fine not to exceed \$4,000 or confinement in jail for a term not to exceed one year or both a fine and confinement. A person may not receive community supervision for the offense.

Link:

<http://www.capitol.state.tx.us/statutes/docs/PR/contntent/htm/pr.005.00.000053.00.htm#53.258.00>

(4) Sec. 162.006

§ 162.006. CONSTRUCTION ACCOUNT REQUIRED IN CERTAIN CIRCUMSTANCES.

(a) A contractor who enters into a written contract with a property owner to construct improvements to a residential homestead for an amount exceeding \$5,000 shall deposit the trust funds in a construction account in a financial institution.

(b) **The periodic statement received from the financial institution must refer to the account as a "construction account" to satisfy the requirements of this section.** (Emphasis added)

Comment: Lender liability for setting up and not funding into a "construction account"? Maybe.

B. Texas Constitution

Article 16-Section 50 Home Equity Notices (Open [Heloc] and Closed End)

Link:

<http://www.capitol.state.tx.us/tconst/sections/cn001600-005000.html>

a. Subsection (a)(6)(Q)(vi)-Security Instrument Disclosure

(vi) the security instruments securing the extension of credit contain a disclosure that the extension of credit is the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution

b. Subsection (a)(6)(Q)(viii)-Right to Rescind

(viii) the owner of the homestead and any spouse of the owner may, within three days after the extension of credit is made, rescind the extension of credit without penalty or charge

Comment: See 7 TAC §§153.25 discussion below.

c. Subsection (a)(6)(Q)(ix)-Written Acknowledgement of Fair Market Value

(ix) the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made

d. Subsection (g)-12 Day Notice

(g) An extension of credit described by Subsection (a)(6) of this section may be secured by a valid lien against homestead property if the extension of credit is not closed before the 12th day after the lender provides the owner with the following written notice on a separate instrument

Link to English Disclosure:

http://www.occc.state.tx.us/pages/Legal/disclosures/hm_disc.pdf

Link to Spanish Disclosure:

http://www.occc.state.tx.us/pages/Legal/disclosures/HEDisc_newSP.pdf

Comment: See EXHIBIT E. The 78th Legislature amended the 12 Day Notice to accommodate HELOCs and clean up the discrepancy between the notice and the constitutional language regarding the debt a lender may require to be paid off as a condition to the loan. See also 7 TAC §§153.51(2). Consequently, the additional

notice allowed by the Texas Supreme Court in *Stringer v. Cendent Mortgage Corp.*, 23 S.W. 3rd 353(Tex.2000) is no longer necessary.

Link to *Stringer*:

<http://www.fc.state.tx.us/Home%20Equity/991301o.pdf>

Link: <http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=78&SESS=R&CHAMBER=S&BILLTYPE=JR&BILLSUFFIX=00042&VERSION=5&TYPE=B>

Home Equity Reverse Mortgage

e. Subsection (k)(8)-Acknowledgement of Receipt of Counseling

(8) that is not made unless the owner of the homestead attests in writing that the owner received counseling regarding the advisability and availability of reverse mortgages and other financial alternatives;

f. Subsection (k)(9)-Reverse Mortgage Notice

(9) that requires the lender, at the time the loan is made, to disclose to the borrower by written notice the specific provisions contained in Subdivision (6) of this subsection under which the borrower is required to repay the loan;

B. Administrative Code

Link:

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.viewtac](http://info.sos.state.tx.us/pls/pub/readtac$ext.viewtac)

1. Finance Commission

a. 7 TAC §§1.307 Relocation of Licensed Offices

(a) A licensee may move the licensed office from the licensed location to any other location by giving notice of intended relocation to the commissioner not less than 30 days prior to the anticipated moving date. The notice must include the present address of the licensed office, the contemplated new address of the licensed office, the approximate date of relocation, and a copy of the notice to debtors.

(b) Written notice of a relocation of an office must be mailed to all debtors of record at least

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five days prior to the date of relocation. Any licensee failing to give the required notice shall waive all default charges on payments coming due from the date of relocation to 15 days subsequent to the mailing of notices to debtors. Notices shall identify the licensee, give both old and new addresses, old and new telephone numbers, and state the date relocation is effective. The notice to debtors can be waived or modified by the commissioner when it is in the public interest. A request for waiver or modification must be submitted in writing for approval. The commissioner may approve notification to debtors by signs in lieu of notification by mail, if in the commissioner's opinion, no debtors will be adversely affected.

b. 7 TAC §§1.826 Quotation of Net Pay-Offs

(a) If a borrower, spouse of a borrower, or a co-obligor inquires about the net amount necessary to pay the borrower's indebtedness in full, a lender shall provide the requested information to the person making the inquiry free of charge within a reasonable time. A lender shall provide this information even if at the time the inquiry is made the account is delinquent. On a net pay-off inquiry relating to a secondary mortgage loan under Subchapter G a lender shall provide the quote in writing.

(b) In the case of a loan made under Subchapter E or F, a reasonable time in which to respond to an inquiry for a net pay-off shall be two business days. On a secondary mortgage loan made under Subchapter G, a reasonable time in which to respond to an inquiry for a net pay-off shall be seven calendar days.

c. 7 TAC §§1.827 Bilingual Disclosure

(a) Each licensee shall fully disclose the terms of a loan contract subject to Chapter 342 to the borrower. If all or a majority of the negotiations between the licensee and the borrower are conducted in the Spanish language, disclosure of the terms of the contract shall be in writing in the Spanish language as well as in English. The disclosure shall be deemed to have been made properly if the borrower is furnished a completed form prescribed by the commissioner for this purpose and the borrower acknowledges receipt thereof or if the lender provides the borrower with a written disclosure of equivalent information.

(b) To provide evidence that the disclosure form referred to in subsection (a) of this section has been given, the following statement is to be written, printed, stamped, or typed on the original promissory note or loan contract and signed or initialed by the borrower or borrowers: "RECIBI LA FORMA INFORME DE PRESTAMO."

d. 7 TAC §§1.845 Complaints and Inquires Notice

(a) Definitions. "Privacy notice" means any notice that a lender gives regarding a consumer's right to privacy as required by a specific state or federal law.

(b) Required Notice.

(1) The following notice must be given to let consumers know how to file complaints: The (your name) is (licensed and examined or registered) under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (your name) should contact the Office of Consumer Credit Commissioner through one of the means indicated below: In Person or U.S. Mail: 2601 North Lamar Boulevard, Austin, Texas 78705-4207. Telephone No.: 800/538-1579. Fax No.: 512/936-7610. E-mail: consumer.complaints@occc.state.tx.us. Website: www.occc.state.tx.us.

(2) The required notice must be given in the language in which a transaction is conducted.

(3) The required notice must be included with each privacy notice.

(4) Regardless of whether any state or federal law requires the lender to give privacy notices, the lender must take appropriate steps to let consumers know how to file complaints by giving the required notice in compliance with paragraph (1) of this subsection.

(5) A notice is also required on each contract of a licensed lender pursuant to §14.104, Texas Finance Code.

(A) The text of the notice required by paragraph (1) of this subsection is acceptable to meet this requirement; or

(B) A lender may use the following notice: "This lender is licensed and examined by the State of Texas--Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit

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Commissioner, 2601 North Lamar
Boulevard, Austin, Texas 78705-4207, (512)
936-7600, (800) 538-1579."

e. 7 TAC §§1.857 Full Disclosure Requirements --Other Than Open End or Revolving Loan Plans

(a) If rates or charges are stated in advertising, they shall be expressed in terms of an "annual percentage rate" (simple annual interest rate). Any advertisement that states the amount of any installment payment, the dollar amount of any finance charge or the number of installments or the period of repayment shall also state:

(1) the amount of the loan expressed as "amount financed" (cash advance);

(2) the number, amount, and due dates or periods of payments scheduled to repay the indebtedness if the credit is extended;

(3) the rate of the finance charge; and

(4) the sum of the payments expressed as "total of payments" (amount of loan).

(b) The information required by this subsection shall be clearly shown in such a manner as not to be deceiving or misleading.

(c) If any licensee advertises that the first installment on a loan may be extended beyond one month from the loan date, the licensee must also clearly state whether a charge is to be made for the extension.

(d) For purposes of this section, compliance by an authorized lender with the Federal Truth-In-Lending Act and regulations promulgated thereunder relating to closed-end transactions shall constitute compliance with §342.505, Texas Finance Code and these administrative rules.

f. 7 TAC §§1.858 Full Disclosure Requirements --Open End or Revolving Loan Plans

(a) Any advertisement of an open-end or revolving loan plan which states any of the specific terms of that plan, shall also clearly and conspicuously set forth the following items:

(1) the time period, if any, within which any credit extended may be repaid without incurring a finance charge;

(2) the method of determining the balance upon which a finance charge will be imposed;

(3) the method of determining the amount of the finance charge;

(4) the method by which any charge for insurance, if any, is to be calculated;

(5) when periodic rates may be used to compute the finance charge the periodic rates expressed as annual percentage rates.

(b) For purposes of this section, compliance by an authorized lender with the Federal Truth-In-Lending Act and regulations promulgated thereunder relating to open-end credit transactions shall constitute compliance with the Texas Credit Title and these administrative rules.

g. 7 TAC §§1.901 Consumer Notifications

(a) When a written contract or agreement is made under the authority of Texas Finance Code, Chapter 345, 347, or 348, the contract must contain as a separate section or otherwise conspicuously set out from the surrounding written material, the following statement: "To contact (insert authorized business name of retail seller, creditor, or holder as appropriate) about this account call (insert telephone number of retail seller, creditor, or holder as appropriate). This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 N. Lamar Blvd., Austin, Texas 78705-4207; (800) 538-1579; (512) 936-7600, and can be contacted relative to any inquiries or complaints."

(b) The telephone number of the retail seller, creditor, or holder may be printed in conjunction with the name and address of the retail seller, creditor, or holder elsewhere on the contract or agreement provided the notice in subsection (a) of this section is amended to direct the reader's attention to the area of the contract where the telephone number may be found.

(c) A retail seller as that term is defined in Chapter 345 or in Chapter 348 or a creditor as that term is defined in Chapter 347 may continue to use the notice as previously required by this section without modification for a period of one year following the effective date of this rule.

h. 7 TAC §§3.34 Posting of Notice in All Financial Institutions Re Requirements for Certain Loan Agreements To Be in Writing

(a) An Act of the 71st Legislature, 1989, Chapter 831, §1, Senate Bill 413, 1989 Texas Session Law Service 3788 (Vernon), requires that all financial institutions conspicuously post notices informing borrowers of the requirements that

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certain loan agreements be in writing. Additionally, it provides that the State Finance Commission of Texas prescribe the language to be used in the notice. The purpose of this section is to provide the language for the notice and to clarify the manner and location of the notice within the financial institutions so as to fully inform borrowers of the requirements.

(b) Each financial institution shall post in the public lobby of each of its offices other than off-premises electronic deposit facilities, the public notice set forth in this subsection.

[Attached Graphic](#) (c) The State Finance Commission shall provide the preceding notice in dimensions and print which it determines is appropriate to fully inform borrowers of the requirements of Act of the 71st Legislature, 1989, Chapter 831, §1, Senate Bill 413, 1989 Texas Session Law Service 3788 (Vernon).

i. 7 TAC §§4.4 Change of Location

Each licensee shall give the banking commissioner 30 days' prior, written notification of any change in any location from which it conducts any of its currency exchange, transportation, or transmission activities, including the identity of the new location, the name of the lessor or owner of the new location, and the estimated date of the change.

j. 7 TAC §§5.1 Required Disclosures in Connection with Certain Home Loans

(a) Purpose and Applicability.

(1) The purpose of this section is to provide the means by which lenders may comply with the notice requirements of the Finance Code, Section 343.102. Compliance with this section is deemed compliance with these notice requirements.

(2) This section applies to any mortgage application received on or after September 1, 2001, for each home loan that:

(A) **is a fixed rate loan that has a contract interest rate of 12% or greater a year;** or

(B) is an adjustable rate loan that:

(i) has a maximum fixed rate of interest pursuant to a schedule of steps or tiered rates that is 12% or greater a year; or

(ii) **has a maximum variable rate of interest that when calculated upon the index's value at the time of application plus maximum**

margin increases may result in an interest rate of 12% or greater a year.

(b) Definitions.

(1) Application means the submission of a borrower's financial information in anticipation of a credit decision, whether written or computer generated. If the submission does not state or identify a specific property, the submission is not an application for the purposes of this section.

(2) Authenticate means:

(A) to sign; or

(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(3) Home Loan shall have the meaning given in Finance Code §343.001(2).

(4) Lender means, generally, the secured creditor or creditors named in the debt obligation and document creating the lien.

(c) Notice Requirements.

(1) Prescribed content. The notice must appear on a full, separate page with no text other than that provided in this section. The form of the notice shall be **substantially similar** to that provided by this section.

[Attached Graphic](#)

(2) Notice Requirement. A lender shall deliver a notice for each home loan described in subsection (a)(2) of this section.

(3) **Acknowledgement. A lender may request that the applicant authenticate the notice acknowledging applicant's timely receipt of the notice.**

(4) **List of housing counseling agencies.**

(A) **A lender must provide the applicant with either:**

(i) **a list of the Texas-located housing counseling agencies approved by the United States Department of Housing and Urban Development ("HUD"); or**

(ii) **a list of at least five HUD-approved housing counseling agencies nearest the applicant's residence.**

(B) The list provided under subparagraph (A) of this paragraph must contain housing counseling agency information that is not more than 90 days old or if more than 90 days old, is the most recent information available from HUD.

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(5) Spanish translation. A Spanish translation of the notice, provided by the Finance Commission, is required if the transaction is conducted primarily in Spanish.

(d) Delivery of notice.

(1) The notice shall be delivered to an applicant:

(A) on the date required for delivery of the Good Faith Estimate under the Real Estate Settlement Procedures Act;

(B) within three business days after application if the Real Estate Settlement Procedures Act does not apply to the covered mortgage loan; or

(C) within three business days of determining that the loan will be covered by this section, if on the date for delivery under subparagraph (A) or (B) of this paragraph the lender after reasonable diligence has not yet determined whether the home loan is a loan as described in subsection (a)(2) of this section.

(2) The notice must be delivered to an applicant at least one business day prior to closing.

(3) A mortgage broker may deliver the notice for the lender.

(4) Mail delivery. The notice may be delivered by placing it in the mail or with an overnight delivery service on the date required for delivery, addressed to the applicant at the given mailing address. An applicant is presumed to have received the notice within three business days of mailing with prepaid first-class postage or within one business day of deposit with an overnight delivery service.

(5) Electronic delivery. A lender may provide the required disclosure by electronic communication in compliance with state and federal law governing electronic signatures and electronic transactions (15 U.S.C. §7.001 et seq.; Tex. Bus.& Comm. Code §43.001 et seq.). A consumer must affirmatively consent to receive the notice electronically. A lender that uses electronic communication to provide the disclosure shall:

(A) send the disclosure to the consumer's electronic address; or

(B) make the disclosure available at another location such as an Internet website; and

(i) alert the consumer of the disclosure's availability by sending a notice to the consumer's electronic address. The notice shall identify the account involved and the address of the Internet website or other location where the disclosure is available; and

(ii) make the disclosure available for at least 90 days from the date the disclosure first

becomes available or from the date of the notice alerting the consumer of the disclosure, whichever comes later.

(6) Denied Applications. If the application is denied before the time for delivery of the notice, the lender need not provide the denied borrower with notice.

(7) Multiple Applicants. In the case of multiple applicants for a home loan, it is only necessary for the lender to deliver the notice to one applicant.

(e) Sunset provision. This section will be considered for repeal or amendment in June 2003.(Emphasis added)

Comment: EXHIBIT F-Texas High Cost Loan Notice. A lender may obtain a statement from the applicant acknowledging receipt of the disclosure at closing. The lender may also add a disclaimer like "The lender is not affiliated with any of the housing counseling agencies whose names are provided to you with this notice. The lender is not responsible for information or advice given by a housing counseling agency from which you may seek advice."See EXHIBIT G-Acknowledgement of Receipt of "Important Notice to Home Loan Borrower" and HUD Approved Housing Counselor List. "Substantially Similar" notice means that the State of Texas seal should be included.

Link to English Disclosure:

http://www.occc.state.tx.us/pages/Legal/disclosures/hm_disc.pdf

Link to Spanish Disclosure:

http://www.fc.state.tx.us/5.1sp_ds.pdf

Link to Current HUD Counselors:

<http://www.hud.gov/offices/hsg/sfh/hcc/states/texas.txt>

2. Texas Savings and Loan

a. 7 TAC §§64.10 Consumer Complaint Process

(a) Definitions

(1) "Privacy notice" means any notice which a savings and loan association gives regarding a consumer's right to privacy, regardless of whether it is required by a specific state or federal law or given voluntarily.

(2) "Required notice" means a notice in a form set forth or provided for in subsection (b) (1) of this section.

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(b) Notice of how to file complaints

(1) In order to let its consumers know how to file complaints, savings and loan associations must use the following notice: The (name of savings and loan association) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Texas Savings and Loan Department. Any consumer wishing to file a complaint against the (name of savings and loan association) should contact the Texas Savings and Loan Department through one of the means indicated below: In Person or by U.S. Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Telephone No.: (877) 276-5550, Fax No.: (512) 475-1360, E-mail: TSLD@tsld.state.tx.us

(2) A required notice must be included in each privacy notice that a savings and loan association sends out.

(3) Regardless of whether a savings and loan association is required by any state or federal law to give privacy notices, each savings and loan association must take appropriate steps to let its consumers know how to file complaints by giving them the required notice in compliance with paragraph (1) of this subsection.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a savings and loan association conducts business on a face-to-face basis, the required notice, in the form specified in paragraph (1) of this subsection, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) For customers who are not given privacy notices, the savings and loan association must give the required notice when the customer relationship is established.

(C) If a savings and loan association maintains a web site, the required notice must be included in a screen which the consumer must view whenever the site is accessed.

b. 7 TAC §§79.122 Consumer Complaint Process

(a) Definitions

(1) "Privacy notice" means any notice which a state savings bank gives regarding a consumer's right to privacy, regardless of whether it is required by a specific state or federal law or given voluntarily.

(2) "Required notice" means a notice in a form set forth or provided for in subsection (b) (1) of this section.

(b) Notice of how to file complaints

(1) in order to let its consumers know how to file complaints, state savings banks must use the following notice: The (name of state savings bank) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Texas Savings and Loan Department. Any consumer wishing to file a complaint against the (name of state savings bank) should contact the Texas Savings and Loan Department through one of the means indicated below: In Person or by U.S. Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Telephone No.: (877) 276-5550, Fax No.: (512) 475-1360, E-mail: TSLD@tsld.state.tx.us

(2) A required notice must be included in each privacy notice that a state savings bank sends out.

(3) Regardless of whether a state savings bank is required by any state or federal law to give privacy notices, each state savings bank must take appropriate steps to let its consumers know how to file complaints by giving them the required notice in compliance with paragraph (1) of this subsection.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a state savings bank conducts business on a face-to-face basis, the required notice, in the form specified in paragraph (1) of this subsection, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) For customers who are not given privacy notices, the state savings bank must give the required notice when the customer relationship is established.

(C) If a state savings bank maintains a web site, the required notice must be included in a

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screen which the consumer must view whenever the site is accessed.

3. Mortgage Broker

a. 7 TAC §§80.9 Required Disclosures

(a) At the time an application for a Mortgage Loan is made to a Mortgage Broker or Loan Officer, the Mortgage Broker or Loan Officer shall provide the Mortgage Applicant with a disclosure describing their relationship, the duties of the Mortgage Broker or Loan Officer to the Mortgage Applicant, and a description of how the Mortgage Broker or Loan Officer will be compensated for his or her services. Such disclosures are to be made using forms promulgated by the Commissioner. Such disclosures shall include a statement to the effect that the Department oversees the enforcement of the Act (including conducting investigations of any complaints) and provide a consumer toll free telephone number for the Department.

(b) Anytime a Mortgage Broker or Loan Officer charges or receives from a Mortgage Applicant a fee for a service that is provided by a third party and retains any portion of the fee so charged or received:

(1) The portion retained by the Mortgage Broker or Loan Officer and a description of the service actually rendered by the Mortgage Broker or Loan Officer shall be disclosed to the Mortgage Applicant in writing and

(2) The portion so retained by the Mortgage Broker or Loan Officer shall not exceed the reasonable value of services actually rendered by the Mortgage Broker or Loan Officer for the benefit of the Mortgage Applicant.

(3) Any Mortgage Broker or Loan Officer retaining any portion of any fee or fees charged by third parties, however denominated, shall maintain appropriate documentation to substantiate the basis for the retention of such monies, including the reasonable value of the services rendered for such fee or fees.

(4) Affiliated business arrangements, as provided for under the Real Estate Settlement Procedures Act, and payments made pursuant thereto shall be disclosed to Mortgage Applicants as provided for by the Real Estate Settlement Procedures Act and the regulations implementing that act.

(c) Consumer Complaint Procedure

(1) Definitions

(A) "Privacy notice" means any notice which a Mortgage Broker or Loan Officer gives regarding a consumer's right to privacy, regardless of whether it is required by a specific state or federal law or given voluntarily.

(B) "Required notice" means a notice in a form set forth or provided for in paragraph (2)(A) of this subsection.

(2) Notice of how to file complaints

(A) In order to let its consumers know how to file complaints, Mortgage Brokers and Loan Officers must use the following notice: (Name of Mortgage Broker or Loan Officer) is licensed under the laws of the State of Texas and by state law is subject to regulatory oversight by the Texas Savings and Loan Department. Any consumer wishing to file a complaint against (name of Mortgage Broker or Loan Officer) should contact the Texas Savings and Loan Department through one of the means indicated below: In Person or by U.S. Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Telephone No.: (877) 276-5550, Fax No.: (512) 475-1360, E-mail: TSLD@tsld.state.tx.us

(B) A required notice must be included in each privacy notice that a Mortgage Broker or Loan Officer sends out.

(C) Regardless of whether a Mortgage Broker or Loan Officer is required by any state or federal law to give privacy notices, each Mortgage Broker or Loan Officer must take appropriate steps to let its consumers know how to file complaints by giving them the required notice in compliance with subparagraph (A) of this paragraph or by providing the disclosure specified in this subsection.

(D) Any one of the following measures is deemed to be an appropriate step to give the required notice:

(i) In each registered office or branch office where a Mortgage Broker or Loan Officer conducts business on a face-to-face basis, the required notice, in the form specified in subparagraph (A) of this paragraph, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, etc.) are posted;

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(ii) If a Mortgage Broker or Loan Officer maintains a web site, the required notice must be included in a screen prominently displayed; or

(iii) Providing a completed mortgage broker disclosure in the form required by subsection (a) of this section executed at application.

Comment: This is the current disclosure as amended on April 16, 2004 by the Finance Commission of Texas which adopted amendments to 7 TAC §80.9, Required Disclosures relating to the disclosures which a mortgage broker or loan officer must give to a mortgage loan applicant. The purpose of the amendments was to provide for a more detailed statement as to how consumers may file complaints and to more prominently give notice about the Mortgage Broker Recovery Fund which is administered by the Texas Savings and Loan Department.

In the same announcement the Finance Commission issued its long awaited ruling on mortgage broker discount points. The Finance Commission ruled that a mortgage broker may not charge discount points to a borrower unless 1)it is a direct pass through of buydown points charged by the investor, or 2)the mortgage broker is the payee on the note. Unlike the RESPA test to determine whether a loan originator is a mortgage broker and subject to additional disclosure requirements, the real source of funding the loan is not determinative for this state rule. Consequently, table funded loans (loans funded in a mortgage broker's name with the investor's funds) enable Texas mortgage brokers to charge discount points to borrowers without being a mortgage banker per RESPA. Under RESPA the loan originator must use its own funds or own warehouse line to avoid being classified as a mortgage broker and subject to the additional mortgage broker federal rules and disclosures.

Link:

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=T&app=9&p_dir=P&p_rloc=110044&p_tloc=&p_ploc=1&pg=2&p_tac=&ti=7&pt=4&ch=80&rl=10](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=T&app=9&p_dir=P&p_rloc=110044&p_tloc=&p_ploc=1&pg=2&p_tac=&ti=7&pt=4&ch=80&rl=10)

Disclosure:

<http://www.tsld.state.tx.us/disclosure1.htm>

b. 7 TAC §§80.12 Display of license certificates; change of address

(a) Each application for a license under the Act requires the applicant to indicate the location(s) at which he or she proposes to conduct the licensed activity. A separate license is required for each specified location. When issued, each license will indicate the location for which it is issued.

(b) Each required license issued pursuant to the Act and this Chapter must be prominently displayed at the location indicated thereon. With respect to any such licensed location which is primarily a computer or similar electronic device, if it is not reasonably possible to display any and all required licenses at such location, the person(s) responsible for complying with the requirement for displaying required licenses may comply with such requirement by setting forth the information specified in their license and causing it to be conspicuously displayed on the first computer screen viewed by a prospective Mortgage Applicant after accessing such computer or similar electronic device. If, due to the number of persons required to display such information, more than one screen is required, sequentially accessed screens following the first screen accessed will be deemed to comply with this requirement.

(c) Before the tenth day preceding the effective date of any change in address, a Mortgage Broker shall notify the Commissioner in writing of the proposed new address of that Mortgage Broker or, as applicable, a Loan Officer sponsored by that Mortgage Broker. A new license certificate, reflecting the new address, must be obtained prior to a Mortgage Broker or Loan Officer conducting business at a new address.

4. State Credit Union

a. 7 TAC §§91.120 Posting of Notice Regarding Certain Loan Agreements

(a) As required by the Business and Commerce Code §26.02, all credit unions are required to conspicuously post notices informing members of the requirements that certain loan agreements must be in writing. The notice must include the language and be in the format prescribed by the Finance Commission of Texas in §3.34 of this title (relating to Posting of Notice in All Finance Institutions).

(b) Each credit union shall post the notice required by subsection (a) of this section in the

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lobby of each of its offices other than off-premises electronic deposit facilities.

b. 7 TAC §§91.409 Permanent Closing of an Office or Operation

A credit union may permanently close any of its established offices. The credit union shall provide notice to its members and the department no later than 60 days prior to the proposed closing. The credit union shall also post a notice to members in a conspicuous manner on the premises of the effected office at least 30 days prior to the proposed closing.

c. 7 TAC §§97.106 Complaint Notice

- (a) Every credit union shall post, in its principal place of business and all other offices and service facilities, a public notice which provides the name, address, and telephone number of the department. The notice shall further inform members that complaints to the department may be directed to that address or telephone number.
- (b) The notice shall be printed in at least 14-point type or larger, and shall be clearly visible in a public entrance or lobby area. The commissioner shall prescribe the design and content of the notice to be used for this purpose.

5. Joint Financial Regulatory Agencies

a. 7 TAC §§153.5 Three percent fee limitation: Section 50(a)(6)(E) in pertinent part provides:

An equity loan must not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit.

(1)

(3) Charges that are Interest. Charges an owner or an owner's spouse is required to pay that constitute interest under the law, for example per diem interest and points, are not fees subject to the three percent limitation.

(4) Charges that are not Interest. Charges an owner or an owner's spouse is required to pay that are not interest are fees subject to the three percent limitation.

(5)

(6) Charges to Originate. Charges an owner or an owner's spouse is required to pay to originate an equity loan that are not interest are fees subject to the three percent limitation.

(7).....

Comment: When adopting new 7 TAC, Chapter 153, §§153.1-153.5, 153.7-153.18, 153.20, 153.22, 153.24-25, 153.41, and 153.51 the Finance Commission of Texas and Texas Credit Union Commission (the "Commissions") stated:

Three commenters suggested that the section addressing interest be modified to define "discount points" and specify that discount points and origination fees paid to the lender are excluded from the 3% limitation. The section as proposed specifies that costs that constitute interest under Texas law are not included under the 3 percent limitation. The Commissions believe that the section as proposed is appropriate as it relies on existing statutory **and case law** in arriving at the interpretation. The Commissions may consider enumerating the components of interest as determined by these authorities in a future interpretation. (Emphasis added)

Link:

<http://www.fc.state.tx.us/Home%20Equity/ch153adop.htm>

Comment: Some of that existing case law is still out there and suggests discount and origination fees should be included in the 3% cap.

Discount Points: See *Tarver v. Sebring Capital Credit Corp.*, 69 S.W. 3d 708 (Tex. App.-Waco 2002) where the court gave great weight to the signed "Discount Point Acknowledgement" also attached here to as EXHIBIT H.

Origination Fee: See *Thomison v. Long Beach Mortgage Co.*, 176 F. Supp. 2nd 714 wherein the court stated "If a loan origination fee is not a "fee [...] necessary to originate... the extension of credit," the Court cannot fathom what such a fee would be."

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Comment: On January 29, 2004 ACORN (Association for Community Organizations for Reform Now) filed suit in Austin challenging the interpretations of the Texas home equity lending provisions approved at the joint meeting of the Texas Credit Union Commission and the Texas Finance Commission on December 18, 2003. The suit challenges numerous "safe harbor" interpretations of the Texas Constitution.

Link to ACORN lawsuit:

http://www.ppdocs.com/library/ACORN_Home_Equity_Suit.pdf

b. 7 TAC §§153.13 Preclosing Disclosures:Section 50(a)(6)(M)(ii)

An equity loan may not be closed before one business day after the date that the owner of the homestead receives a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the documentation to the owner or the lender may modify previously provided documentation on the date of closing.

(1) A lender may satisfy the disclosure requirement of this section by delivery to the borrower of a properly completed Department of Housing and Urban Development (HUD) disclosure Form HUD-1 or HUD-1A.

(2) An owner may consent to receive the preclosing disclosure on the date of closing in the case of a bona fide emergency occurring before the date of the extension of credit. An equity loan secured by a homestead in an area designated by Federal Emergency Management Agency (FEMA) as a disaster area is an example of a bona fide emergency if the homestead was damaged during FEMA's declared incident period.

(3) To modify timing of the disclosure, the lender should obtain written consent from the owner that:

- (A) describes the emergency;
- (B) specifically states that the owner consents to receive the preclosing disclosure on the date of closing; and
- (C) bears the signature of all of the owners entitled to receive the preclosing disclosure.

(4) A de minimus variance can be good cause at the owner's option. An owner who has received a preclosing disclosure may consent to receive a subsequent or modified preclosing disclosure on the date of closing under the good cause standard if:

(A) the actual disclosed fees, costs, points and charges on the date of closing do not vary from the initial preclosing disclosure by more than the greater of:

- (i) \$100 of the amount charged at closing or
- (ii) 0.125 percent of the principal amount of the equity loan at closing; or

(B) one or more items in subparagraph (A) of this paragraph is less than the disclosed rate or amount on the initial preclosing disclosure.

(5) An owner may consent to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing if another good cause exists. A condition that would cause the owner substantial financial hardship if the equity loan were not allowed to close on the scheduled date of closing is an example of other good cause.

(6) An equity loan may be closed at any time during normal business hours on the next business day following the calendar day on which the owner receives the preclosing disclosure or any calendar day thereafter.

Comment: See EXHIBIT I-Texas Home Equity Pre Closing Disclosure. Some prefer to further define the rule in their disclosure. I believe that the better tact is to be as clear as the rule and tract the language of the rule as close as possible.

c. 7 TAC §§153.25 Right of Rescission:Section 50(a)(6)(Q)(viii)

The owner of the homestead and any spouse of the owner may, within three days after the extension of credit is made, rescind the extension of credit without penalty or charge.

(1) This provision gives the owner's spouse, who may not be in record title or have community property ownership, the right to rescind the transaction.

(2) The owner and owner's spouse may rescind the extension of credit within three calendar days. If the third calendar day falls on a Sunday or federal legal public holiday then the right of rescission is extended to the next calendar day

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that is not a Sunday or federal legal public holiday.

(3) A lender must comply with the provisions of the Truth-in-Lending Act permitting the borrower three business days to rescind a mortgage loan in applicable transactions. Lender compliance with the right of rescission procedures in the Truth-in-Lending Act and Regulation Z, satisfies the requirements of this section if the notices required by Truth-in-Lending and Regulation Z are given to each owner and to each owner's spouse.

Comment: Remember that the coverage for Texas homesteads is not exactly the same as coverage for TILA/Reg Z right to cancel. You do not necessarily have to have a principal residence to have a property eligible to be a Texas homestead. Some properties may be eligible as Texas home equity loan properties and subject to the referenced state home equity right to rescind, but not be subject to the federal TILA/Reg Z right to cancel. Please review the federal right to cancel form. The federal right to cancel form gives the borrower 3 days to cancel from the later of 1)date of transaction, 2)date borrower receives TIL disclosures and 3)date of receipt of right to cancel. For an unimproved homestead loan or business homestead loan, both subject to Texas home equity right to rescind, but not subject to federal TILA/Reg Z right to cancel, **DO NOT GIVE REGULAR FEDERAL RIGHT TO CANCEL NOTICE WITHOUT GIVING OTHER REQUIRED TILA/REG Z DISCLOSURES. THE RIGHT TO CANCEL PER THE NOTICE (CONTRACT LAW 101!) WILL STAY OPEN UNTIL “BORROWER RECEIVES THE TIL DISCLOSURES!!!.**

Under normal federal law (oxymoron?) if a lender does not give the federal right to cancel when it was required, Reg Z provides that the federal right to cancel expires after 3 years. I don't know if a lender would get that relief when the transaction was not subject to federal right to cancel in the first place. I'm afraid not. See EXHIBIT J-Texas Home Equity Right to Rescind. This form can be used in those situations not subject to TILA/Reg Z. Some wholesalers are still requiring a Texas right to rescind notice on ALL Texas home equity loan transactions.

d. 7 TAC §§153.51 Consumer Disclosure:Section 50(g)

An equity loan may not be closed before the 12th day after the lender provides the owner with the consumer disclosure on a separate instrument.

(1) If a lender mails the consumer disclosure to the owner, the lender shall allow a reasonable period of time for delivery. A period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery.

(2) Certain provisions of the consumer disclosure do not contain the exact identical language concerning requirements of the equity loan that have been used to create the substantive requirements of the loan. The consumer notice is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan transaction. A lender may supplement the consumer disclosure to clarify any discrepancies or inconsistencies.

(3) A lender may rely on an established system of verifiable procedures to evidence compliance with this section.

Comment: See EXHIBIT E-Texas Home Equity Notice Concerning Extensions of Credit.

D. Ethics

Ethics Opinion 525. May 1998

Tex. Comm. On Professional Ethics, Op. 525 V.61 Tex. B. J. 460 (1998)

Question Presented

May an attorney who prepares loan documents for a real estate purchaser at the request of the attorney's lender-client prepare a deed to be used in the transaction if he is not requested to do so by the seller and without submitting a dual representation disclosure?

Statement of Facts

An attorney represents a lender and drafts loan documents for residential loans to the lender's customers. The lender's loan commitment to its customer provides that the lender will have the loan documents (typically a

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note and deed of trust) prepared by the lender's attorneys and requires the lender's customer to pay for the loan documents.

When a purchase money loan is being made to the lender's customer, the loan may have to be additionally secured by a vendor's lien retained in a deed to the lender's customer (a purchaser) from a seller with whom the lender's attorney has no contact. In that case, the lender's attorney (without being requested by the seller to do so) prepares a warranty deed for execution by the seller to the purchaser and delivers it and the loan documents to the title company for closing. The attorney sometimes delivers a statement to be submitted to the seller for preparation of the deed. At other times, the attorney may not submit a statement but indicates to the title company the amount of his charge to the seller for preparation of the deed "if it is used."

The attorney (or lender) delivers to the lender's customer a written notice that the attorney represents only the lender in the transaction and does not undertake to represent or advise the lender's customer and that the lender's customer should obtain counsel or representation from another attorney.

Although the seller pays for the attorney's preparation of the deed (assuming it is used), the attorney has no contact with the seller and does not make any disclaimer of representation or dual representation disclosure to the seller.

Questions

1. Is the lender's attorney ethically prohibited from preparing a deed for execution by a seller and submitting a bill for payment by the seller without having been requested or authorized by the seller to prepare the deed for the seller and without giving the seller a

notice disclaiming that he represents the seller?

2. Under the facts presented, may the lender's attorney prepare a deed for the seller if the seller requests or authorizes him to do so?

3. If the answer to the second question is "yes," is the lender's attorney to provide a full dual representation disclosure to the seller?

Discussion (Omitted-See link for full discussion)

Conclusion

A lender's attorney may prepare loan documents at the request of the lender and be paid by the purchaser-borrower. A deed reserving a vendor's lien and transferring it to the lender could be a "loan document."

If the lender's attorney is representing only the lender, either the lender or the lender's attorney must fully advise the purchaser-borrower that the lender's attorney does not represent the purchaser-borrower and that the purchaser-borrower should obtain advice and representation by another attorney. In the absence of notice that the lender's attorney does not represent the purchaser-borrower, Rule 1.06 is applicable and the full disclosure required by that rule must be made to the purchaser-borrower.

Neither the lender nor its attorney can suggest to the seller that the seller allow the lender's attorney to represent the seller in the preparation of the deed.

If the seller requests or authorizes the lender's attorney to represent the seller in preparing a deed for execution by the seller, the lender's attorney may prepare the deed but in doing so will be engaged in the dual representation of the lender and the seller.

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Before undertaking the joint representation of the seller and the lender, the lender's attorney must reasonably believe the representation of each client will not be materially affected, and must provide full dual representation disclosure to the seller and lender and obtain the consent of each after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any.

A lender's attorney may not prepare a deed for use in a real estate transaction without having been requested or authorized to do so by the seller unless the attorney provides written notice to the seller that he has prepared the deed at the request of the lender, that he represents the lender and only the lender in the transaction, and that the seller is advised to consult his own legal counsel before signing the deed. If the lender's attorney knows that the seller has an attorney, lender's attorney must send the draft deed to that attorney. If the lender's attorney initially does not know but later learns that the seller is represented by an attorney, he should send a copy of the draft deed to the seller's attorney promptly after acquiring such knowledge.

Comment: Lender attorney beware. Review your Attorney Notice to properly authorize your preparation of a vendor lien or owelty lien deed. Reconsider whether you prepare any deed not having vendor's lien or owelty lien provisions. The following is sample language to be added to a lender attorney's attorney notice:

NOTICE TO BORROWER AND SELLER REGARDING DEED PREPARATION. We represent Lender and only Lender in this transaction. If we have prepared a draft deed, it has been at the request of Lender. Seller and Borrower are advised to consult their respective legal counsel with any questions before signing the draft deed. We have provided the draft deed as a convenience. IF THE DRAFT DEED WE PREPARED IS USED, SELLER AND

BORROWER (OR THEIR ATTORNEYS) SHOULD REVIEW AND AMEND IT, IF NECESSARY, TO MAKE CERTAIN THAT IT IS CONSISTENT WITH THE SALES CONTRACT AND CORRECTLY REFLECTS THE CONDITION OF TITLE FOR THE PROPERTY AND THE OBLIGATIONS OF THE PARTIES. TRANSFERRING RIGHTS TO REAL PROPERTY, AND IF APPLICABLE RESERVING CERTAIN RIGHTS, FOR EXAMPLE MINERAL INTEREST, IS AN INHERENTLY COMPLEX MATTER AND CONTEMPLATES THE INVOLVEMENT OF ATTORNEYS. IF APPLICABLE, THE DEED SHOULD BE AMENDED TO REFLECT ANY MINERAL OR OTHER RESERVATION. BE CERTAIN THAT THE DEED EXPRESSES THE INTENT OF SELLER AND BORROWER. Another deed, or amendments to the draft deed, must be reviewed and approved by us prior to its execution. To the extent Lender and Seller are the same, we further represent Lender in its capacity as Seller for purposes of Deed preparation only. Seller is signing this agreement only to receive the notices and to consent to the terms contained in this paragraph.

Link:

http://www.txethics.org/reference_opinions.asp?opinionnum=525

III. FEDERAL DISCLOSURES

Time and space for this presentation will not allow us to have a lot of fun or go into great detail with federal disclosures. Darn. The most I can hope to give you, other than a headache, is a laundry list and internet link for at home study.

A. Community Reinvestment Act §345.44 Public Notice By Banks.

Link:

<http://www.fdic.gov/regulations/laws/rules/2000-6500.html#2000part345.44>

B. Equal Credit Opportunity Act(ECOA)-Reg B

1. ECOA Non-Discrimination Notice
2. Notice of Incomplete Application
3. Statement of Credit Denial, Termination or Change

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4. Notice of Action Taken
5. Appraisal Disclosure
6. Equal Housing Lender Poster
7. Application For Joint Credit (New)

Link ECOA:

<http://www.fdic.gov/regulations/laws/rules/6500-1200.html>

Link Regulation B:

<http://www.fdic.gov/regulations/laws/rules/6500-2900.html#6500part202reg>

C. Fair Credit Reporting Act

-Notices, Authorization & Acknowledgement
[Clients own form - allows creditor to send multiple verifications with signature of borrower(s) on one form]

Link FCRA:

<http://www.ftc.gov/os/statutes/fcra.pdf>

D. Fair Housing Act

-Fair Housing Poster (Lender uses form provided by their regulator)

Regulation Link:

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?type=simple;c=ecfr;cc=ecfr;sid=57b8c08b35126a817593e84ffef042d;idno=12;region=DIV1;q1=poster;rgn=div5;view=text;node=12%3A4.0.1.2.27>

E. Federal Deposit Insurance Corporation Act

Agency Link:

<http://www.fdic.gov/regulations/laws/rules/1000-100.html>

F. Federal Housing Act (FHA)

1. HUD 92564-CN For Your Protection Get a Home Inspection
2. HUD-92900-A Addendum to Application
3. HUD-92922-B Important Notice to Homebuyers
4. HUD-92901 Refinance of HECM Notice to the Borrower
5. HUD Notice to Seniors about Reverse Mortgages (HECM)
6. Informed Consumer Choice Disclosure (Client prepares to Compare PMI with MIP costs)

7. Addendum To HUD-I Settlement Statement

FHA (HUD) Housing Programs & Regulations:

http://www.access.gpo.gov/nara/cfr/waisidx_03/24cfrv2_03.html

HUD's Home Page :

<http://www.hud.gov/index.html>

HUD Forms for FHA loans:

http://www.hudclips.org/sub_nonhud/html/forms.htm

G. Federal Trade Commission (FTC)

Agency Link:

<http://www.ftc.gov/>

H. Gramm-Leach-Bliley Act (GLB)(Privacy Act)

-Privacy Notice - [Lender must create their own form]

Link:

<http://banking.senate.gov/conf/>

I. Home Mortgage Disclosure Act (HMDA)- Regulation C

1. HMDA Poster
2. HMDA Register

Regulation Link:

http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=57b8c08b35126a817593e84ffef042d&tpl=/ecfrbrowse/Title12/12cfr203_main_02.tpl

J. Home Ownership Equity Protection Act (HOEPA)

-Mortgages Exceeding Certain Percentages and Amounts Notice

Regulation Link:

<http://www4.law.cornell.edu/uscode/15/ch41sch1.html>

K. Homeowner's Protection Act (HPA)

1. PMI Initial Disclosure for Fixed Rate Loans
2. PMI Initial Disclosure for Adjustable Rate Loans
3. PMI Initial Disclosure for Lender Paid Insurance
4. PMI Annual Notice

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5. Notice of Termination of PMI
6. Notice of Reasons for NOT Canceling PMI
7. Notice of Termination of PMI

Regulation Link:

<http://www4.law.cornell.edu/uscode/12/ch49.html>

L. Internal Revenue Code

Website for Rules:

http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title26/26tab_02.tpl

IRS Website for forms and other information:

<http://www.irs.gov/>

M. National Association of Mortgage Brokers (NAMB)

Suggested Broker Notice:

http://www.namb.org/consumers/borrower_disclosure_form.htm

Website:

<http://www.namb.org/>

N. National Flood Insurance Act and Flood Disaster Protection Act

1. Standard Flood Hazard Determination Form
2. Letter of Map Amendment
3. Letter of Map Review
4. Letter of Map Revision

Website:

http://www.access.gpo.gov/nara/cfr/waisidx_99/44cfrv1_99.html

O. Real Estate Settlement Procedures Act (RESPA)-Regulation X

1. Special Information Booklet (HUD Booklet)
2. Good Faith Estimate of Settlement Costs (GFE)

Link to form:

<http://www.fdic.gov/regulations/laws/rules/6500-2525.html#6500resappendixc>

3. HUD-I Settlement Statement

Link to form:

<http://www.fdic.gov/regulations/laws/rules/7034.pdf>

4. HUD-IA Settlement Statement

Link to form:

<http://www.fdic.gov/regulations/laws/rules/7036.pdf>

5. Affiliated Business Arrangement Disclosure Statement

Link to form:

<http://www.fdic.gov/regulations/laws/rules/6500-2525.html#6500resappendixd>

6. Initial Escrow Account Statement

Link to aggregate analysis math:

<http://www.fdic.gov/regulations/laws/rules/6500-2525.html#6500resappendixe>

ppdocs aggregate escrow calculator link:

<http://www.ppdocs.com/AggEscrow.aspx>

7. Annual Escrow Account Statement
8. Servicing Disclosure Statement

Link to form:

<http://www.fdic.gov/regulations/laws/rules/6500-2525.html#6500resappendixms1>

9. Notice of Assignment, Sale, or Transfer of Servicing Rights

Link to form:

<http://www.fdic.gov/regulations/laws/rules/6500-2525.html#6500resappendixms2>

Links to Act and Regulation:

RESPA:

<http://www.fdic.gov/regulations/laws/rules/6500-2530.html#6500respao1974>

Regulation X:

<http://www.fdic.gov/regulations/laws/rules/6500-2520.html#6500part3500>

P. Truth In Lending Act (TILA)-Regulation Z

1. Truth In Lending Disclosure Statement
2. Multiple Advances
3. Change in Rate or Terms
4. Variable Rate
5. Itemization of Amount Finance

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6. Consumer Handbook on Adjustable Rate Mortgage (CHARM Booklet)
7. ARM Program Disclosure
8. Notice of Right to Cancel
9. "Total Sales Price"

Link to sample forms:

<http://www.fdic.gov/regulations/laws/rules/6500-1950.html#6500appendixhtopart226>

Links to Act and Regulation

TILA:

<http://www.fdic.gov/regulations/laws/rules/6500-200.html#6500tilaccpa>

Regulation Z:

<http://www.fdic.gov/regulations/laws/rules/6500-1400.html#6500part226tilregz>

Q. Unfair or Deceptive Acts or Practices (Regulation AA)

-Notice to Co-Signers

Regulation Link:

http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=635f26c4af3e2fe4327fd25ef4cb5638&tpl=/ecfrbrowse/Title12/12cfr227_main_02.tpl

R. USA Patriot Act

Customer Identification Notice (Lender creates their own notice)

Link to Act:

<http://www.treas.gov/press/releases/doc/nprm.pdf>

Final rule on consumer privacy:

<http://www.fincen.gov/finalciprule.pdf>
F&Q issued January 2004

Customer identification:

<http://www.treas.gov/press/releases/js335.htm>
issued April 30, 2003

S. Veteran's Administration (VA)

1. VA 26-0503 Federal Collection Policy Notice
2. VA 26-0592 Counseling Checklist for Military Homebuyers
3. VA 26-8978 Rights of VA Loan Borrowers
4. VA 26-8844 Financial Counseling Statement

VA Website Link:

<http://homeloans.va.gov/>

IV. CALCULATION AND ASSEMBLY TOOLS

A. Early Disclosure Matrix

EXHIBIT K is a disclosure matrix that illustrates what Texas and federal disclosures are required from loan application through closing. For the most part these are the documents that are the "early disclosures". Disclosures specific to the nature of the creditor and "lobby notices" are not included.

Link:

<http://www.ppdocs.com/DisclosureMatrix.aspx>

B. Right of Cancellation Matrix

EXHIBIT L is a matrix indicating when the Federal Right to Cancel is required in a transaction.

Link:

<http://www.ppdocs.com/RightOfCancel.aspx>

C. ppdocs.com

1. We have a web site calculator that can calculate the required starting balance for an escrow account per RESPA/Reg X. It is FREE.

Link: <http://www.ppdocs.com/AggEscrow.aspx>

2. We have a web site initial disclosure engine that can prepare the majority of the required Texas and federal initial disclosures for a Texas residential loan transaction. It does not include lobby or processing disclosures. It is FREE.

Link: <http://www.ppdocs.com/>

V. CONCLUSION

What a tangled web we have weaved. In the not too distant future we should not be surprised to see disclosures that will summarize disclosures so the average attorney can explain to the average borrower the average loan transaction.

EXHIBIT A

**RESIDENTIAL CONSTRUCTION CONTRACT LENDER ADDENDUM
(Texas)**

Words used in this Addendum are defined below. Words in the singular mean and include the plural and vice versa.

“Contractor” is _____.

“Improvements” are the improvements made to a single-family residence or new construction of a single-family residence.

“Lender” is _____.

“Owner” is _____.

“Property” is _____.

Conflicts. Contractor and Owner have executed a Residential Construction Contract (or similar named agreement) detailing the agreement for construction between Contractor and Owner of Improvements on the Property (“Contract”). That agreement is incorporated herein by reference. However, such incorporation is not intended to and shall not amend, supersede or qualify in any way the terms and conditions of this Addendum and to the extent said Contract contains conflicting provisions; the provisions of this Addendum shall control.

Legal Requirements. Contractor and Owner do hereby warrant, certify and represent that Contractor and Owner have complied with all legal requirements regarding the execution of the Contract and construction of the Improvements (whether new or existing), including without limitation, Subchapter K of Chapter 53 or the Texas Property Code and Section 50(a)(5), Article XVI of the Texas Constitution. Contractor agrees to comply with any delivery deadlines of notices, disclosures, and other documentation to Owner and Lender as prescribed by law. Contractor and Owner do further hereby represent (to the best of their actual knowledge) that Contractor and Owner are aware of, and have complied with or will comply with, the following legal rights and obligations:

- a. **Joinder of Spouse.** The Contract has been entered into by all owners with the consent of each owner’s spouse, as evidenced by their signatures below.
- b. **No Work Commenced.** Contractor and Owner do hereby affirm that no work of any kind, including the destruction or removal of any existing improvements, site work, clearing, grubbing, draining or fencing of the Property) has commenced or been performed on the Property, no labor or materials have been ordered or furnished to or on behalf of Owner for use in such construction, and no contracts or agreements (verbal or written) for the furnishing of Labor, materials, or services for use in the construction of improvements on the Property have been executed (except the above referenced Residential Construction Contract or similar named agreement)or

Residential Construction Contract Addendum (Texas)

Initials _____

EXHIBIT A

in trust and warrants and agrees to defend the title to the Property, recorded in the real property records in the county in which the Property is located.

- c. **Receipt of Disclosure Statement.** Before execution, acknowledgement and delivery of the Contract, Owner received from Contractor the Disclosure Statement required by Section 53.255(b) of the Texas Property Code.
- d. **Receipt of List of Subcontractors.** Unless Owner has waived the right to receive from Contractor a list of the subcontractors and suppliers, or any updated information required to be given, evidenced by a separate written and signed waiver of rights to this information, before execution, acknowledgement and delivery of the Contract, Contractor provided Owner with a list of subcontractors and suppliers and will provide owner and Lender with an updated list of subcontractors and suppliers not later than the 15th day after the date a subcontractor or supplier is added to or deleted from the list.
- e. **Receipt of Closing Documents.** At least one business day before obtaining this extension of credit for Improvements, Owner did receive from Lender all documentation relating to the extension of credit, unless Owner waived the right to one business day advance delivery of the disclosure from Lender and the other closing documents because of a bona fide emergency or other good cause.
- f. **Disbursement of Funds.** Contractor shall provide Owner and Lender with signed periodic statements that list the bills or expenses that Contractor is requesting payment for. Said requests will be in writing on forms reasonably acceptable to Lender and subject to inspection by Lender or Lender's designee indicating satisfactory progress. No further disbursement will be made by Lender if Contractor or Owner is in default with any term or condition of the contract or any related document associated herewith.
- g. **Final Bills-Paid Affidavit.** At the time of final payment, Contractor shall provide Owner and Lender with a Final Bills-Paid Affidavit.
- h. **Alterations and Extras.** It is expressly agreed that the terms of the Contract authorize the making of changes by the Owner and Contractor only upon execution of written change orders by Owner and Contractor. Owner shall notify Lender of any changes agreed to by Owner and Contractor before the changes are made. Lender must approve in writing any changes that decrease the value of the property.
- i. **Mechanic's Lien.** To secure payment of the Contract, a mechanic's, artisan's, and materialman's lien on the Property and on all improvements and fixtures on the Property at any time is granted to Contractor. To enforce the lien and to further secure payment of the Contract, Owner hereby transfers and conveys the Property to _____, Trustee,

Residential Construction Contract Addendum (Texas)

Initials _____

EXHIBIT A

in trust and warrants and agrees to defend the title to the Property. If Owner performs all the covenants and pays the Contract according to the terms of this Contract, this conveyance shall become void and have no further effect, and at Owner's expense, Contractor shall release the lien created by this Contract. Contractor may appoint, in writing, a substitute or successor trustee, succeeding to all rights and responsibilities of the Trustee. If Owner defaults on the payments to Contractor or fails to perform any of Owner's obligations, or if Contractor in good faith believes that the prospect of payment or performance is impaired, and the default or good-faith belief in impairment continues after Contractor gives Owner notice of the default or the basis for the belief in impairment and the time within which it must be cured, as may be required by law or by written agreement, then Contractor:

- (a) request Trustee to foreclose this lien, in which case, Contractor or Contractor's agent shall give notice of the foreclosure sale as provided by the Texas Property Code as then amended; and
- (b) purchase the Property at any foreclosure sale by offering the highest bid and then have the bid credited in the note.

If requested by Contractor to foreclose this lien, Trustee shall:

- (a) either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then amended;
- (b) sell and convey all or part of the Property to the highest bidder for cash with a general warranty binding Owner, subject to prior liens and to other exceptions to conveyance and warranty; and
- (c) from proceeds of the sale, pay in this order:
 - 1. expenses of foreclosure, including a reasonable commission to Trustee;
 - 2. to Contractor, the full amount of charges due and unpaid;
 - 3. any amounts required by law to be paid before payment to Owner; and
 - 4. to Owner, any balance.

j. Recording. Contractor and Owner contemplate the recording of this document in the Official Real Property Records of the County in which the Property is located as permitted by Section 53.254 and Section 41.001 of the Texas Property Code.

k. THIS CONTRACT CONSTITUTES A CONSTRUCTION MORTGAGE WITHIN THE MEANING OF SECTION 9.334 OF THE TEXAS BUSINESS & COMMERCE CODE.

l. Waiting Period. If applicable, Owner shall not sign the Contract before the 5th day after Owner makes written application for any extension of credit for the work and material to repair or renovate existing improvements.

Residential Construction Contract Addendum (Texas)

Initials _____

EXHIBIT A

- m. **Place of Execution.** If applicable, Owner and Owner’s spouse shall execute the Contract only at the office of a third-party lender making an extension of credit for the work and material, an attorney at law, or a title company.

- n. **Right of Rescission.** IF APPLICABLE, OWNER MAY RESCIND THE CONTRACT (AND ANY OTHER PROPOSALS, AGREEMENTS OR CONTRACTS WITH CONTRACTOR REGARDING THE REPAIR OR RENOVATION OF EXISTING IMPROVEMENTS), WITHOUT PENALTY OR CHARGE, WITHIN THREE (3) DAYS AFTER THE EXECUTION OF THE CONTRACT BY ALL PARTIES.

“IMPORTANT NOTICE: YOU AND YOUR CONTRACTOR ARE RESPONSIBLE FOR MEETING THE TERMS AND CONDITIONS OF THE CONTRACT. IF YOU SIGN THE CONTRACT AND YOU FAIL TO MEET THE TERMS AND CONDITIONS OF THE CONTRACT, YOU MAY LOSE YOUR LEGAL OWNERSHIP IN YOUR HOME. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.”

EXECUTED this ___ day of _____, 20__.

This contract is subject to Chapter 27, Property Code. The provisions of that chapter may affect your right to recover damages arising from the performance of this contract. If you have a complaint concerning a construction defect arising from the performance of this contract and the defect has not been corrected through normal warranty service, you must provide notice regarding the defect to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law. The notice must refer to Chapter 27, Property Code, and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section 27.004, Property Code.

OWNER:

CONTRACTOR:

By: _____

Title: _____

Residential Construction Contract Addendum (Texas) Initials _____

EXHIBIT A

ASSIGNMENT

Contractor hereby assigns its rights to receive payment under the foregoing Contract, together with the liens above created, to _____ (“Assignee”), provided this assignment shall be effective only with respect to the Contract amount paid to Contractor under the foregoing Contract, with Contractor retaining its right to receive payment of any portion of the Contract amount not then paid to Contractor and further retaining the lien securing same, which retained lien shall be subordinate to the portion of the lien assigned to Assignee. This Assignment is made without recourse, representation or warranty.

CONTRACTOR: _____
(Name of Building Company)

By: _____

Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, _____ by _____
on behalf of said entity. (Name of Building Company)

Notary Public, State of Texas

Notary’s Printed/Typed Name
My Commission Expires:

EXHIBIT A

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, _____ by _____.

Notary Public, State of Texas

Notary's Printed/Typed Name
My Commission Expires:

WHEN RECORDED RETURN TO:

(Name of Building Company)

(Address of Building Company)

EXHIBIT B



**NOTICE TO BORROWERS
CERTAIN LOAN AGREEMENTS
MUST BE IN WRITING**

TEXAS LAW (Section 26.02, Business and Commerce Code) requires that all financial institutions conspicuously post notices summarizing requirements that loan agreements be in writing. You should know that:

- An agreement, promise, or commitment to loan more than \$50,000 **MUST BE IN WRITING AND SIGNED BY THE LENDER OR IT WILL BE UNENFORCEABLE.**
- The written loan agreement will be the **ONLY** source of rights and obligations for agreements to lend more than \$50,000.
- Oral agreements relating to loans over \$50,000 are **NOT EFFECTIVE** either to establish a commitment to lend or to vary the terms of a written loan agreement.

As part of the documentation required for loans over \$50,000, **BORROWERS MUST BE PROVIDED AND MUST SIGN A NOTICE** conspicuously stating that:

"THIS WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

"THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

The notice set forth above, which must be signed by both the borrower and the financial institution, can be in a separate document or incorporated in one or more of the documents constituting the loan agreement. The notice must be in type that is bold faced, capitalized, underlined or otherwise set out from surrounding written material so as to be conspicuous.

EXHIBIT C

OWNERS/BORROWERS:
CONTRACTOR:
PROPERTY:
LENDER:

DISCLOSURE STATEMENT REQUIRED FOR
TEXAS RESIDENTIAL CONSTRUCTION CONTRACT
SEC. 53.255(B) TEXAS PROPERTY CODE

KNOW YOUR RIGHTS AND RESPONSIBILITIES UNDER THE LAW. You are about to enter into a transaction to build a new home or remodel existing residential property. Texas law requires your contractor to provide you with this brief overview of some of your rights, responsibilities, and risks in this transaction.

CONVEYANCE TO CONTRACTOR NOT REQUIRED. Your contractor may not require you to convey your real property to your contractor as a condition to the agreement for the construction of improvements on your property.

KNOW YOUR CONTRACTOR. Before you enter into your agreement for the construction of improvements to your real property, make sure that you have investigated your contractor. Obtain and verify references from other people who have used the contractor for the type and size of construction project on your property.

GET IT IN WRITING. Make sure that you have a written agreement with your contractor that includes: (1) a description of the work the contractor is to perform; (2) the required or estimated time for completion of the work; (3) the cost of the work or how the cost will be determined; and (4) the procedure and method of payment, including provisions for statutory retainage and conditions for final payment. If your contractor made a promise, warranty, or representation to you concerning the work the contractor is to perform, make sure that promise, warranty, or representation is specified in the written agreement. An oral promise that is not included in the written agreement may not be enforceable under Texas law.

READ BEFORE YOU SIGN. Do not sign any document before you have read and understood it. **NEVER SIGN A DOCUMENT THAT INCLUDES AN UNTRUE STATEMENT.** Take your time in reviewing documents. If you borrow money from a lender to pay for the improvements, you are entitled to have the loan closing documents furnished to you for review at least one business day before the closing. Do not waive this requirement unless a bona fide emergency or another good cause exists, and make sure you understand the documents before you sign them. If you fail to comply with the terms of the documents, you could lose your property. You are entitled to have your own attorney review any documents. If you have any question about the meaning of a document, consult an attorney.

GET A LIST OF SUBCONTRACTORS AND SUPPLIERS. Before construction commences, your contractor is required to provide you with a list of the subcontractors and suppliers the contractor intends to use on your project. Your contractor is required to supply updated information on any subcontractors and suppliers added after the list is provided. Your Contractor is not required to supply this information if you sign a written waiver of your rights to receive this information.

MONITOR THE WORK. Lenders and governmental authorities may inspect the work in progress from time to time for their own purposes. These inspections are not intended as quality control inspections. Quality control is a matter for you and your contractor. To ensure that your home is being constructed in accordance with your wishes and specifications, you should inspect the work yourself or have your own independent inspector review the work in progress.

MONITOR PAYMENTS. If you use a lender, your lender is required to provide you with a periodic statement showing the money disbursed by the lender from the proceeds of your loan. Each time your Contractor requests payment from you or your lender for work performed, your Contractor is also required to furnish you with a disbursement statement that lists the name and address of each subcontractor or supplier that the Contractor intends to pay from the requested funds. Review these statements and make sure that the money is being properly disbursed.

EXHIBIT C

CLAIMS BY SUBCONTRACTORS AND SUPPLIERS. Under Texas law, if a subcontractor or supplier who furnishes labor or materials for the construction of improvements on your property is not paid, you may become liable and your property may be subject to a lien for the unpaid amount, even if you have not contracted directly with the subcontractor or supplier. To avoid liability, you should take the following actions:

(1) If you receive a written notice from a subcontractor or supplier, you should withhold payment from your contractor for the amount of the claim stated in the notice until the dispute between your contractor and the subcontractor or supplier is resolved. If your lender is disbursing money directly to your contractor, you should immediately provide a copy of the notice to your lender and instruct the lender to withhold payment in the amount of the claim stated in the notice. If you continue to pay the contractor after receiving the written notice without withholding the amount of the claim, you may be liable and your property may be subject to a lien for the amount you failed to withhold.

(2) During construction and for 30 days after final completion, termination, or abandonment of the contract by the contractor, you should withhold or cause your lender to withhold 10 percent of the amount of payments made for the work performed by your contractor. This is sometimes referred to as a 'statutory retainage.' If you choose not to withhold the 10 percent for at least 30 days after final completion, termination, or abandonment of the contract by the contractor and if a valid claim is timely made by a claimant, and your Contractor fails to pay the claim, you may be personally liable and your property may be subject to a lien up to the amount that you failed to withhold.

If a claim is not paid within a certain time period, the claimant is required to file a mechanic's lien affidavit in the real property records in the county where the property is located. A mechanic's lien affidavit is not a lien on your property, but the filing of the affidavit could result in a court imposing a lien on your property if the claimant is successful in litigation to enforce the lien claim.

SOME CLAIMS MAY NOT BE VALID. When you receive a written notice of a claim or when a mechanic's lien affidavit is filed on your property, you should know your legal rights and responsibilities regarding the claim. Not all claims are valid. A notice of a claim by a subcontractor or supplier is required to be sent, and the mechanic's lien affidavit is required to be filed, within strict time periods. The notice and the affidavit must contain certain information. All claimants may not fully comply with the legal requirements to collect on a claim. If you have paid the contractor in full before receiving a notice of a claim and have fully complied with the law regarding statutory retainage, you may not be liable for that claim. Accordingly, you should consult your attorney when you receive a written notice of a claim to determine the true extent of your liability or potential liability for that claim.

OBTAIN A LIEN RELEASE AND A BILLS-PAID AFFIDAVIT. When you receive a notice of claim, do not release withheld funds without obtaining a signed and notarized release of lien and claim from the claimant. You can also reduce the risk of having a claim filed by a subcontractor or supplier by requiring as a condition of each payment made by you or your lender that your contractor furnish you with an affidavit stating that all bills have been paid. Under Texas law, on final completion of the work and before final payment, the contractor is required to furnish you with an affidavit stating that all bills have been paid. If the contractor discloses any unpaid bill in the affidavit, you should withhold payment in the amount of the unpaid bill until you receive a waiver of lien or release from that subcontractor or supplier.

OBTAIN TITLE INSURANCE PROTECTION. You may be able to obtain title insurance policy to insure that the title to your property and the existing improvements on your property are free from liens claimed by subcontractors and suppliers. If your policy is issued before the improvements are completed and covers the value of the improvements to be completed, you should obtain, on the completion of the improvements and as a condition of your final payment, a 'completion of improvements' policy endorsement. This endorsement will protect your property from liens claimed by subcontractors and suppliers that may arise from the date the original title policy is issued to the date of the endorsement.

_____ Date

_____ Date

_____ Date

_____ Date

EXHIBIT D

OWNERS/BORROWERS:
CONTRACTOR:
PROPERTY:
LENDER:

BORROWER'S ACKNOWLEDGEMENT OF
TEXAS CONSTRUCTION COMPLIANCE PROCEDURES

Owner/Borrower acknowledges that:

- 1) Construction Contract Disclosure
Before a residential construction contract was executed, Contractor delivered to Owner a Disclosure Statement Required For Texas Residential Construction Contract, Sec. 53.255(b) Texas Property Code ("Construction Contract Disclosure").
- 2) List of Sub Contractors and Materialman
Unless Owner/Borrower waived same in writing according to Texas Property Code 53.256(d), the Contractor attached to the Texas Residential Construction Contract Disclosure a written list that identified by name, address and telephone number, each subcontractor and supplier the Contractor intends to use in the work to be performed. If the list wasn't attached to the Construction Contract Disclosure provided by Contractor, unless Owner/Borrower waived same in writing according to Texas Property Code 53.256(d), it has since been provided to Owner by the Contractor.
- 3) Advance Delivery of Loan Documents and Construction Contract Disclosure
Lender has delivered to the Owner all documentation relating to the loan (including the Construction Contract Disclosure) not later than one business day before the date of the closing or, in the alternative, Owner has waived said right to one business day advance delivery of the Construction Contract Disclosure from Lender and the other closing documents because of a bona fide emergency or other good cause.

Owner/Borrower Date

Owner/Borrower Date

EXHIBIT E

LENDER:
BORROWER:
PROPERTY: , ,

NOTICE CONCERNING EXTENSIONS OF CREDIT

DEFINED BY SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION

SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

- (A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;
- (B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME;
- (C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;
- (D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY WITH A COURT ORDER;
- (E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3 PERCENT OF THE LOAN AMOUNT;
- (F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM TIME TO TIME UNLESS IT IS A HOME EQUITY LINE OF CREDIT;
- (G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;
- (H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;
- (I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD PROPERTY, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED PRIMARILY FOR THE PRODUCTION OF MILK;
- (J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR HOME;
- (K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY GIVEN TIME;

EXHIBIT E

- (L) THE LOAN MUST BE SCHEDULED TO BE REPAYED IN PAYMENTS THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT PERIOD;
- (M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;
- (N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER, TITLE COMPANY, OR AN ATTORNEY AT LAW;
- (O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF INTEREST AUTHORIZED BY STATUTE;
- (P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;
- (Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MUST:
 - (1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT EXCEPT A DEBT THAT IS SECURED BY YOUR HOME OR OWED TO ANOTHER LENDER;
 - (2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;
 - (3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE BLANKS LEFT TO BE FILLED IN;
 - (4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;
 - (5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS YOU SIGN AT CLOSING;
 - (6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;
 - (7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF THE LIEN, WHICHEVER IS APPROPRIATE;
 - (8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;
 - (9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND
 - (10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY AS PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, OF THE TEXAS CONSTITUTION; AND

EXHIBIT E

- (R) IF THE LOAN IS A HOME EQUITY LINE OF CREDIT:
- (1) YOU MAY REQUEST ADVANCES, REPAY MONEY, AND REBORROW MONEY UNDER THE LINE OF CREDIT;
 - (2) EACH ADVANCE UNDER THE LINE OF CREDIT MUST BE IN AN AMOUNT OF AT LEAST \$4000;
 - (3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD, SOLICITATION CHECK, OR SIMILAR DEVICE TO OBTAIN ADVANCES UNDER THE LINE OF CREDIT;
 - (4) ANY FEES THE LENDER CHARGES MAY BE CHARGED AND COLLECTED ONLY AT THE TIME THE LINE OF CREDIT IS ESTABLISHED AND THE LENDER MAY NOT CHARGE A FEE IN CONNECTION WITH ANY ADVANCE;
 - (5) THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE EXTENDED, WHEN ADDED TO ALL OTHER DEBTS SECURED BY YOUR HOME, MAY NOT EXCEED 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LINE OF CREDIT IS ESTABLISHED;
 - (6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT AT ANY TIME EXCEEDS 50 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME, AS DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED, YOU MAY NOT CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT UNTIL THE BALANCE IS LESS THAN 50 PERCENT OF THE FAIR MARKET VALUE; AND
 - (7) THE LENDER MAY NOT UNILATERALLY AMEND THE TERMS OF THE LINE OF CREDIT.

THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI, OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE.

_____[Signatures on following page]_____

EXHIBIT E

ADDITIONAL NOTICE

ALL OWNERS OF THE HOME MUST SIGN AND DATE A NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION AFTER YOU HAVE SUBMITTED A WRITTEN LOAN APPLICATION TO LENDER OR LENDER'S REPRESENTATIVE. YOU MUST RECEIVE A COPY OF THIS NOTICE AT THE TIME YOU SIGN IT.

Received by the undersigned on the date indicated:

_____ Date

_____ Date

_____ Date

_____ Date

EXHIBIT F

IMPORTANT NOTICE TO HOME LOAN BORROWERS

READ THIS NOTICE TO GIVE YOU IMPORTANT INFORMATION THAT CAN HELP YOU, PROTECT YOU, AND MAYBE SAVE YOU MONEY.

◆ WHY AM I RECEIVING THIS NOTICE?

Texas law requires your lender to give you this Notice when you apply for a home loan with an interest rate of 12% or greater.

◆ CAN HOUSING COUNSELING REALLY HELP ME?

Yes. Contacting a housing counselor **before** closing might save you hundreds or thousands of dollars. Borrowing money with your home as collateral is a complicated process. Housing counselors understand this process and the documents used. Do not sign any documents until you have read and understand them. You are entitled to have your own attorney review any documents before closing the loan.

◆ ARE THERE HOUSING COUNSELING AGENCIES NEAR ME?

Yes. To find a housing counseling agency near you, look at the list of HUD-approved housing counseling agencies your lender gave you. For additional copies call HUD: 888-466-3487 or www.hud.gov, or the Texas Finance Commission: 866-303-4636 or www.fc.state.tx.us.

◆ ARE ALL HOME LOANS AND LENDERS THE SAME?

No. It is important to shop around. Be sure to obtain all cost information. Compare these costs to other lenders' costs. A nearby housing counseling agency can help you.

◆ WHERE CAN I GET MORE INFORMATION OR FILE A COMPLAINT?

If you have questions or complaints, call or email the Texas Finance Commission Home Loan Hotline: 866-303-4636 or homeloaninfo@fc.state.tx.us. Other resources include:

Texas Department of Banking: www.banking.state.tx.us
Texas Office of Consumer Credit Commissioner: www.occc.state.tx.us
Texas Savings & Loan Department: www.tslsld.state.tx.us
U.S. Consumer Gateway: www.consumer.gov
HUD: www.hud.gov

Fannie Mae: www.homepath.com
Federal Reserve: www.federalreserve.gov/consumers.htm



OFFICIAL STATE OF TEXAS NOTICE
REGARDING HIGH COST HOME LOANS

The loan you have applied for **may** be a "high-cost home loan" as defined by state and federal law. Look at everything you earn and everything you owe and then ask yourself if you can afford to make the payments when due.

If you can't afford this loan, you may lose your home.

Lender Disclaimer: The lender is not affiliated with any of the housing counseling agencies whose names are provided to you with this notice. The lender is not responsible for information or advice given by a housing counseling agency from which you may seek advice.

EXHIBIT G

LENDER:
BORROWER:
PROPERTY: , ,

**Acknowledgement of Receipt of
"Important Notice to Home Loan Borrowers"
and
HUD Approved Housing Counselor List**

I/We acknowledge receipt of the "Important Notice to Home Loan Borrowers" disclosure and current (no older than 90 days or if more than 90 days old, is the most recent information available from HUD) list of HUD Approved Counseling Agencies in Texas within three (3) business days after loan application. The Lender is not affiliated with any of the housing counseling agencies whose names are provided to you with this notice. The Lender is not responsible for information or advice given by a housing counseling agency from which you may seek advice.

EXHIBIT H

LENDER:
BORROWERS:

PROPERTY:
LOAN NO:

**TEXAS HOME EQUITY
DISCOUNT POINT ACKNOWLEDGMENT**

This loan is an extension of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution.

I acknowledge that I am the owner, or a spouse of an owner, of the property commonly known as: _____ ("Homestead Property").

I acknowledge that I have elected to pay discount point(s) to obtain a lesser interest rate. Discount point(s) are a one-time charge. Each discount point is equal to one percent (1%) of the principal loan amount. Discount point(s) are assessed by a lender at closing to increase the yield on the loan. I understand that the interest rate stated in the Note would have been higher if I had not paid such discount point(s). Discount point(s) are considered prepaid interest. Prepaid interest is "interest" according to Section 50(6)(E), Article XVI of the Texas Constitution and are excluded from the three percent (3%) limit on fees required by the Lender to be paid by the Borrower, owner, or the owner's spouse to originate, evaluate, maintain, record, insure, or service the extension of credit.

I acknowledge that Lender is relying on this statement.

_____ (Date)	_____ (Date)
(Owner/Owner's Spouse/Borrower)	(Owner/Owner's Spouse/Borrower)
_____ (Date)	_____ (Date)
(Owner/Owner's Spouse/Borrower)	(Owner/Owner's Spouse/Borrower)

EXHIBIT I

LENDER:
BORROWER:
PROPERTY:

ACKNOWLEDGEMENT OF ADVANCE DISCLOSURE OF
HOME EQUITY FEES AND CHARGES

- 1) Borrower acknowledges that at least one business day before this loan was closed all owners of the Property received a final itemized disclosure ("Initial Preclosing Disclosure") of the actual fees, points, interest, costs, and charges that were charged at closing.
- 2) If there is any variance to the Initial Preclosing Disclosure and the actual fees, points, interest, costs and charges that were charged at closing which were indicated on the subsequent disclosure then:
 - (A) the annual percentage rate of interest in the loan is within .125 per cent on regular transactions and .25 per cent on irregular transactions, as defined in 12 C.F.R. 226.22, of the Initial Preclosing Disclosure;
 - (B) the actual disclosed fees, costs, points and charges on the date of closing do not vary from the Initial Preclosing Disclosure by more than the greater of:
 - (i) \$100 of the amount charged at closing or
 - (ii) .125 per cent of the principal amount of the equity loan at closing; or
 - (C) one or more items described in (A) or (B) of this paragraph is less than the disclosed rate or amount on the Initial Preclosing Disclosure/loan agreement;
 - (D) we consider the variance to be good cause not to delay this closing by another business day. We consent to this de minimus (small) variance.

(Borrower)

(Borrower)

(Borrower)

(Borrower)

EXHIBIT J

LENDER:
BORROWERS:
PROPERTY:

TEXAS HOME EQUITY
NOTICE OF RIGHT TO RESCIND

- (1) Your Right To Rescind: You are entering into a transaction which will result in a security interest in your Property. The owner of the Property and any spouse of the owner may under Texas law rescind this transaction, without penalty or charge, within three (3) days after the loan is made.
- (2) How To Rescind: If you decide to rescind this transaction, you may do so by notifying us in writing at:

You may use this notice to rescind by dating and signing below. Keep one (1) copy of this notice because it contains important information about your rights. If you rescind by mail or telegram, you must send the notice no later than midnight of the third day following the date the loan is made. If you send or deliver your written notice to rescind some other way, it must be delivered to the above address no later than that time.

I Wish To Rescind: (Only one Property Owner's signature is required to effect a rescission.)

_____ Date: _____

(Owner/Owner's Spouse/Borrower)

- (3) Receipt of Notice: The undersigned hereby represents and warrants that I/we am the only person(s) with an ownership interest in the Property. We hereby acknowledge that the transaction on the fact of this Notice was consummated and that we have each received one copy of this Notice on the day of

_____ Date: _____

(Owner/Owner's Spouse/Borrower)

EXHIBIT K

Disclosures	1st Lien Purchase 1 - 4 Primary Residence	1st Lien Refinance - No Cash Out 1 - 4 Primary Residence	1st Lien Construction - One Time Closing 1 - 4 (Consumer) Primary Residence	1st Lien Construction - Temporary	Subordinate Lien Purchase 1 - 4 Primary Residence	Subordinate Lien Refinance 1 - 4 Primary Residence	Subordinate Lien Construction - Temporary 1 - 4 Primary Residence	1st Lien Construction - To Builder 1 - 4 Business Purpose	1st Lien Purchase (g) 1 - 4 NOT Primary Residence	1st Lien Refinance (g) 1 - 4 NOT Primary Residence	Texas Home Equity 1st Lien	Texas Home Equity Subordinate Lien	Lot Loan (i)	Rental Property (Business Purpose)	Home Improvement Subordinate Lien	HELOC - 1st Lien	HELOC - 2nd Lien
Federal																	
Appraisal Notice	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
Consumer Privacy Policy Notice	1	1	1	1	1	1	1		1	1	1	1	1		1	1	1
ECOA Adverse Action & Counteroffer	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Federal Insurance Consumer Protection Notice (p)	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
Flood Determination (j)	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4
Flood Notice	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4
HELOC Brochure																3	3
HMDA Reportable Loan	Yes	Yes	Yes		Yes	(m)			Yes	Yes	(t)	(t)		Yes	Yes	(t)	(t)
HUD-1 or HUD-1A (b)	6	6	6	(k)	6	6	(h,k)		6	6	6	6	6		6	6	6
Initial Escrow Statement (if escrows)	6	6	6		7	7			6	6	6	6				6	
PMI Disclosure Standard (if applicable)	6	6	6						6	6				6			
PMI Lender Paid (if applicable)	4	4	4						4	4	4			4			
RESPA Good Faith Estimate	3	3	3	(k)	3	3	(k)		3	3	3	3			(k)		
RESPA Notice of Transfer	6	6	6						6	6	6						
RESPA Servicing Disclosure	2	2	2	(k)					2	2	2						
Settlement Cost Booklet	3		3	(k)	3		(k)		3								
TIL - High Cost / Sec 32 Disclosure (l)		5	5	5		5	5										
TIL Final	6	6	6	6	6	6	6		6	6	6	6	6		6	6	6
TIL Initial Estimated	3		3	(k)			(k)										
TILA Charm Booklet (a)	3	3	3		3	3					3	3			3		
TILA Program Disclosure (a)	2	2	2	6	2	2	6				2	2			2	2	2
TILA Worst Case Disclosure (r)	6	6	6	6	6	6	6				6	6					
U.S. Patriot Act CIP Notice	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4

Residential Disclosures From Lenders

EXHIBIT K

Disclosures	1st Lien Purchase 1 - 4 Primary Residence	1st Lien Refinance - No Cash Out 1 - 4 Primary Residence	1st Lien Construction - One Time Closing 1 - 4 (Consumer) Primary Residence	1st Lien Construction - Temporary	Subordinate Lien Purchase 1 - 4 Primary Residence	Subordinate Lien Refinance 1 - 4 Primary Residence	Subordinate Lien Construction - Temporary	1st Lien Construction - To Builder 1 - 4 Business Purpose	1st Lien Purchase (g) 1 - 4 NOT Primary Residence	1st Lien Refinance (g) 1 - 4 NOT Primary Residence	Texas Home Equity 1st Lien	Texas Home Equity Subordinate Lien	Lot Loan (f)	Rental Property (Business Purpose)	Home Improvement Subordinate Lien	HELOC - 1st Lien	HELOC - 2nd Lien
Texas																	
Important Notice to Home Loan Borrowers (English or Spanish) & HUD Approved Counselors (n)	3	3	3	3	3	3	3				3	3			3	3	3
Insurance Notice to Applicant (Single Premium Offer) (o)	3	3	3	3	3	3	3				(u)	(u)			3	(u)	(u)
Right to Cancel Notice (g)		6(c)	6(d)			6	6				6	6			6	6(v)	6(v)
Texas Collateral Protection Insurance Notice (q)	6	6	6	6	6	6	6	6	6	6	6	6		6	6	6	6
Texas Construction Notice (e)			2 or 4	2 or 4			2 or 4								1		
Texas Finance Commission Complaint Filing Notice (s)	1	1	1	1	1	1	1		1	1	1	1	1		1	1	1
Texas Home Equity Notice (f)											2(f)	2(f)				2(f)	2(f)

EXHIBIT K

PeirsonPatterson, LLP Mortgage Loan Disclosure Matrix

Time Legend

- 1 Before share w/ non-aff, but not later than loan contract.
- 2 At application.
- 3 Within 3 business days of application.
- 4 Before closing.
- 5 At least 3 business days before closing.
- 6 At closing.
- 7 At closing if escrows are collected.

Condition Legend

- (a) If ARM Loan.
- (b) Settlement Agent prepares.
- (c) Unless Const to Perm or same lender refinance with only closing costs included.
- (d) Applicable if Refi Plus Improvements or Purchase Plus Improvements.
- (e) Given by Builder before contract is executed and again by Lender before date of closing.
- (f) At least 12 days before closing.
- (g) If not occupied for more than 14 days during year by owner.
- (h) Although HUD-I or IA is not required, in Tx can not close until at least 5 days from date of application.
- (i) If to be built on within 2 years of purchase.
- (j) At least 10 days prior to closing.
- (k) Not subject to RESPA unless 1) construction lender will provide permanent financing or construction loan is for more than 2 years (unless loan is to bonafide builder) OR 2) part of loan is used to finance transfer of title.
- (l) If fees and points exceed 8% of adjusted amount financed (or Section 32 dollar adjustment) or APR exceeds 10% over like term security.
- (m) Yes, if refi of purchase or home improvement. No, if refi of home equity.
- (n) If Texas property & 12% or greater interest rate for borrower's principal residence.
- (o) If Texas property and single premium credit insurance is offered.
- (p) If insured depository lender or affiliate solicits, offers or sells an insurance product or annuity to consumer.
- (q) If Texas property and lender requires borrower to pay for collateral protection insurance post closing when insurance not escrowed.
- (r) If the loan involves a variable interest rate for a consumer's principal dwelling and has a term of one year or less a lender must give a TIL disclosure which includes a "worst case disclosure" or in the alternative a TIL ARM program disclosure at time of loan application.
- (s) Requires banks, foreign banks, bank holding companies and trust companies to give notice re. how to file complaint when Privacy Policy notice is given to consumer. Title 7 TAC, Sect. 11.37 effective 1-15-02. Applies only to Texas state banks and Texas savings banks.
- (t) Not applicable to national banks.
- (u) No. Such insurance would be considered "Additional Collateral".
- (v) Both Texas and Federal Notices

EXHIBIT L

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Right of Cancellation Matrix

General Scope of Right of Cancellation:

Credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling.

Save and except:

1. **Residential mortgage transaction.** Any transaction to construct (initial construction not subsequent improvement) or acquire a principal dwelling. The lien status of the mortgage is irrelevant for purposes of the exemption; the fact that a loan has junior lien status does not by itself preclude application of this exemption. For example, a home buyer may assume the existing first mortgage and create a second mortgage to finance the balance of the purchase price. Such a transaction would not be rescindable. TILA § 103, § 125, Commentary 226.23(f)(1).
2. **Combined-purpose transaction.** A loan to acquire a principal dwelling and make improvements to that dwelling is exempt if treated as one transaction. If, on the other hand, the loan for the acquisition of the principal dwelling and the subsequent advances for improvements are treated as more than one transaction, then only the transaction that finances the acquisition of that dwelling is exempt. Commentary 226.23(f)(3).
3. **Multiple Purpose Transactions.** If any part of the loan proceeds will be used to finance the acquisition or initial construction of the consumer's principal dwelling. For example, a transaction to finance the initial construction of the consumer's principal dwelling is a residential mortgage transaction even if a portion of the funds will be disbursed directly to the consumer or used to satisfy a loan for the purchase of the land on which the dwelling will be built. Commentary 226.2(a)(24)(6).
4. **Same/Original Lender Refinance.** "Original Lender" means the lender on the original note or the lender who acquired the note thru merger, consolidation or acquisition of the original lender. In a refinancing or consolidation by the "original" creditor of an extension of credit already secured by the consumer's principal dwelling, the right of rescission shall apply, however, to the extent the new amount financed exceeds the sum of (1) the unpaid principal balance plus (2) any earned unpaid finance charge on the existing debt, plus (3) any amounts attributed solely to the costs of the refinancing or consolidation. TILA § 125(e), Commentary 226.23(f)(4).
5. **Construction to Perm.** If the initial loan is a construction loan that meets the definition of a residential mortgage transaction (i.e. for initial improvements), the permanent financing, even from a different lender, is also exempt as a residential mortgage transaction. Commentary 226.2(a)(24)(4).
6. **Other.** There are additional exemptions regarding New Advances, State Creditors, Multiple Advances, Spreader Clauses and Conversion of Open-End to Close-End credit. See P&P for details.

SCENARIOS

Principal Residence Transactions	Description	Give Right to Cancel	Authority	Form
Pure purchase (land & existing improvements)	All proceeds of loan used to "acquire". (A "Residential Mortgage Transaction")	No	TILA § 103, § 125, & Commentary 226.23(f)(1)	N/A
Purchase Land & Existing Improvements Plus Make Additional Improvements	Part of proceeds used to "acquire" existing improvements and remainder used for improvements. (A "Combined Purpose Transaction".)	No - Non-Texas Yes - Texas	Commentary 226.23(f)(3)	N/A RR - Mech. Lien
Purchase Land and Make Initial Improvements	Part of proceeds used to "acquire" lot and remainder used for improvements. (A "Multiple Purpose Transaction".)	No	Commentary 226.2(a)(24)(6)	N/A
Subsequent Improvements	Part of proceeds of loan used to make subsequent home improvement.	Yes	Sect. 226.23(a) and TILA § 103	RR-Regular
Home Equity	All proceeds of loan not used for exempt purpose.	Yes	Reg. Z 226.23(a)	RR-Regular
Bridge Loan	All proceeds of loan used to acquire "a principal residence". Collateral is property borrower is moving out of. Condition lien in Deed of Trust becoming effective when no longer homestead of Borrower.	Yes	Commentary 226.23(a)(1)(4)	RR-Regular
Owerty	Proceeds of loan used to acquire outstanding interest in Borrower's existing "principal residence" with or without renewing existing balance, if any.	Yes	Commentary 226.2(a)(24)(5)	RR

Residential Disclosures From Lenders

EXHIBIT L

Refi - R&E Lot Loan & Make Initial Improvements	Part of proceeds used to refinance lot and remainder used for initial improvements. (A "Multiple purpose transaction").	No	Commentary 226.2(a)(24)6	N/A
Refi - Lot is free & clear & Initial Improvements	All proceeds of loan used for initial improvements. (Exempt because a Residential Mortgage Transaction.)	No	TILA § 103 and Commentary 226.23(f)(1)	N/A
Refi - Regular	Regular refinance. (Not "Const. to Perm." or "Same Lender Refi.")	Yes	TILA § 125	RR-Regular
Refi - Same (original) Lender - Refinance	If same lender Refinance \$ + "amounts attributed solely to the costs of refinancing or consolidation" are exempt.	No	Commentary 226.23(f)4 & TILA § 125(e)(2)	N/A
Refi - Construction to Permanent	If loan being paid off was for initial construction then subsequent refinance is exempt. Loan being paid off must be for initial construction, i.e. Home improvement loan being refinanced is not initial construction, thus refi loan not exempt from rescission.	No	Commentary 226.2(a)(24)-4	N/A
Refi - Refi. plus Rehab.	Refinance existing loan plus \$ for subsequent improvements	Yes	TILA § 125	RR-Regular
Modification Only	Excluded because security interest has already been given. No new lien or security interest. Also, similar to "Same Lender" exception. However, no new money except closing costs.	No	TILA § 125(a) & (e)(2) & Commentary 226.23(f)4	N/A
Modification with Simultaneous Assignment	Because Modification with simultaneous assignment has similar effect as a different lender refinance, the safer practice is to allow Borrower(s) to rescind the Modification (not original loan). Use special P&P Cancellation of Modification form.	Yes		RR-Modification
Cosigner (Non Owner)	If cosigner only on note and no ownership interest then no right to rescind. Must own interest and be their principal dwelling.	In re Cox		N/A
Non-signing Owner (spouse or otherwise)	Give notice to each owner whether or not they sign Note. Non-signing spouse may be "owner" even if not vested in title (i.e. in a community property state (TX) property bought during husband and wife's marriage but vested only in husband's and wife.) When in doubt give notice to non-signing spouse. He/She might have "ownership interest". (Each owner should sign mortgage/deed of trust.)	Yes	Commentary 226.23(a)(2)	RR-Regular

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