

**STATUTORY MINEFIELD FOR
CREATING AND MARKETING
CONDOMINIUMS AND PLANNED DEVELOPMENTS
- A 2008 DRAFTING GUIDE -**

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Chapter 23

PRACTICE

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Statutory Minefield for Creating and Marketing Condominiums and Planned Developments - 2008 Drafting Guide

I. INTRODUCTION

Yesteryear. Having plowed Blackacre for so long, dirt lawyers were comfortable in our knowledge of its terrain. Not much changed, which allowed us to give the same sage advice and use the same trustworthy forms for years, even decades. We tinkered with our forms when we learned about the occasional new law affecting our practice area. Generally, however, we did not expect the law of the land to change much or often. So, we trod well worn paths, not watching where we stepped, trusting our intimate familiarity with Blackacre.

Today. The terrain of Blackacre is changing. No one change is particularly dramatic (except for the Texas Residential Construction Commission Act). Taken together, however, the many and frequent small changes constitute a statutory minefield for the attorney who thinks it is business as usual at Blackacre.

What was a "common law" practice is increasingly becoming a regulatory or "code" practice. The purpose of this article is to shine a light on the many federal and state laws, and local ordinances, that shape the development, documentation, and sales materials used with planned developments and condominiums.

A. Acronyms Used in this Article:

- 2007-C - Law changed in 2007
- 2007-N - Law newly enacted in 2007
- CC&Rs - Declaration of Covenants, Conditions & Restrictions
- CIS - condominium information statement
- ETJ - extraterritorial jurisdiction
- Fannie Mae - Federal National Mortgage Assn.
- FHA - Federal Housing Administration
- H.B. - House Bill
- HOA - homeowners association
- HUD - U.S. Dept. of Housing & Urban Development
- MUD - municipal utility district
- PD - planned development
- PDD - planned development district
- POA - property owners association
- PUD - planned unit development
- RCLA - Residential Construction Liability Act
- TBOC - Texas Business Organizations Code
- TPC - Texas Property Code
- TRCCA - Texas Residential Construction Commission Act
- TREC - Texas Real Estate Commission
- TUCA - (Texas) Uniform Condominium Act
- VA - U.S. Dept. of Veterans Affairs

B. Lay of the Land

We live in interesting and changing times. Below are some of the factors that are reshaping the terrain of Blackacre, causing old laws to be used in new ways, sparking interest in new statutes, and inspiring new practices.

1. Population Skyrocket

The population projections for Texas assure us that Texas will need millions of new housing units during the next few decades. According to the U.S. Census, in 2002 Texas had a population of 20.8+ million people living in 7.4 million households. By 2040, the population of Texas may double to 50 million, creating 12 million more households. That is a heck of a lot of residential real estate work, at least in certain regions of the state. Population projections come from the State's official website.

2. Disclose. Disclose. Disclose.

The doctrine of caveat emptor is missing in action. The tenor of the times is to give the consumer notice of anything that possibly may be perceived as a "negative," even if not required (yet) by statute. A common refrain at legislative hearings on POA issues is the consumer claiming he was not told something before purchasing the property, to which the lawmakers reply, "Let's make another law requiring sellers to give notice of [whatever] to buyers." Voluntary disclosures are preferable to statutes that are traps for the unwary.

3. Cities Require POAs

One of the most interesting aspects of the housing boom in North Texas is that growth cities are requiring developers to create POAs as a condition of the platting process. Notes like "TO BE MAINTAINED BY HOA" are appearing on plats with increasing frequency. Some cities insist on reviewing the HOA restrictions before approving the plat. Less sophisticated cities may require that the restrictions be recorded or the HOA incorporated before the city approves the plat, which puts the cart before the horse.

4. Homebuyers Desire POAs

In spite of sensational headlines depicting the horrors of belonging to a POA, the homebuying public is flocking to developments with mandatory associations, architectural controls, and community amenities. Neighborhood features seem to be as much of a draw as

the homes themselves. Because planned communities with mandatory POAs are becoming the norm, homebuyers in some areas of the state may not have a meaningful option of buying a home in a "straight single family" subdivision.

5. Not The Same Old Condo

The developer meets with city planning officials who say, "Here are your choices. Apply to the city for a replat of your land, or develop your [office park][detached single family subdivision][industrial warehouse] as a condominium, which does not require a replat." Thanks to TUCA's flexibility and the demise of the "condo stigma" from the 1980s, the creative use of the condominium form of ownership is becoming a viable option for developing and marketing all types of properties. In the Austin area, for example, it is not uncommon for entire subdivisions of houses or duplexes to be condominium in ownership.

6. Inexperienced Public

Most homebuyers in Texas are familiar with traditional governmental entities - cities, counties, school districts, and hospital districts. Increasing numbers of Texas homebuyers are familiar with POAs. Relatively few homebuyers outside the Houston area have experience with the array of special districts in which new housing arises. Also, homebuyers moving from urban to until-recently rural areas may naively assume that their new neighborhood will have the standard array of big city services, only to discover they are served by a volunteer fire department, a water co-op, and private trash pick up.

7. Special Purpose Districts

Once upon a time, developers created subdivisions in cities with all the basic services - water, sewer, police, fire, street maintenance, sanitation, parks, even cable television. In high growth areas, the demand for housing often outpaces the abilities of cities to provide services. Some of the growth occurs in unincorporated areas that are not served by any city services. Other developments are springing up in farm towns that, although incorporated as municipalities, have no city taxes and provide no city services. Yet other developments are entirely within the boundaries of service-providing cities which do not have the capacity or the desire to extend certain services to new subdivisions.

To respond to the need for services, the State of Texas has authorized a dizzying array of special purpose districts with authority to levy property or sales taxes and to issue and sell bonds. Most of the districts created under the Water Code are referred to as "General Law Districts." These and the other special purpose districts are governmental subdivisions of the State of Texas. Many of us first encountered these as MUDs, which were widely

used in the Houston area during the building boom of the 1970s and 1980s. The current use and multiple types of special districts are new to some parts of the state, and seem to be on the rise.

8. Activist Legislature

Many of our state senators and representatives see themselves as champions of the consuming public. In previous sessions, they have been receptive to consumers' complaints against POAs and homebuilders. Lawmakers also initiate legislation based on their personal experiences with home purchases, planned developments, and condominiums. As increasing numbers of voters and lawmakers experience homeownership in new types of developments and special districts, we can expect more statutes seeking to regulate these entities.

9. Republic of Houston

What are perceived as dramatic changes in many parts of Texas may be barely perceptible in the Houston area, which has 40 years of extensive experience with planned developments and special districts. In the legislative arena it is well known that Houston has a unique experience with POAs and planned developments, as evidenced the by the "bracket bills" (described later), which are drafted primarily for use in the Houston area. Because some of the now statewide statutes started out as Houston-only bills, attorneys elsewhere in the state cannot ignore the Houston experience. The origins of the Houston situation are described in *Statutory Evolution of Condominiums and Property Owners Associations in Texas*, an article written by Sharon Reuler and Roy Hailey for the 2002 Mortgage Lending Institute, sponsored by the U.T. School of Law.

C. **Creating and Marketing**

1. Creating

Technically, platting is the process that creates the individually owned parcels that are marketed to builders or homebuyers. However, drafting attorneys are usually not directly involved in the platting process. Our role in the creation process typically starts with the "Declaration of Condominium," or the Declaration of Covenants, Conditions & Restrictions" - documents that we draft to work with the subdivision or condominium plats.

For purposes of this article, "creating" a planned development or condominium refers to the lawyer's task of drafting the documents and launching the entity that will govern the property for the next century or more. The developer's attorney usually creates at least the following 3 documents: (1) the declaration or restrictions, also referred to as the CC&Rs or "master deed," (2) the bylaws of the owners association, and (3) the articles of

incorporation (a "Certificate of Formation" in TBOC-lingo) of the owners association. The same drafting attorney may also prepare architectural guidelines, rules and regulations, and community policies. Collectively these documents are typically referred to as the governing documents, the project documents, the HOA or POA documents, or (regrettably) the "dedicatory instruments" (as defined in TPC Chapter 202).

2. Marketing

For purposes of this article, "marketing" pertains to the sale-related documentation that the developer of a condominium of planned development gives to a prospective purchaser. Obviously, the sales contract is the primary document. For condominiums, the condominium information statement is a required disclosure.

3. Condominiums in Particular

a. TUCA. The primary statute affecting the creation and marketing of condominiums is TPC Chapter 82, the Uniform Condominium Act, also known by the acronym of TUCA (Texas Uniform Condominium Act). TUCA must be distinguished from the "Condominium Act," TPC Chapter 81, which applies only to condominiums created before January 1, 1994.

b. Seminal Articles Based on 1993 Act. Apologizes to readers who hoped to find everything about creating and marketing condominiums in this one article. Although this article does reference TUCA, the detail about that particular statute is found in two other articles that were only recently posted to the State Bar's Online Library, but which are not yet "word searchable." The following articles are available by selecting the CLE course at which they were presented.

- Course: 1994 Advanced Real Estate Drafting
Article: *Texas Uniform Condominium Act*
- Course: 1995 Advanced Real Estate Drafting
Article: *Condominium Sales & Resales Under the Texas Uniform Condominium Act*

c. Amendments to 1993 Act. The two "old" CLE articles are still pertinent because TUCA has not been much amended since its original adoption in 1993. All of the TUCA amendments are identified on Appendix C of this article. I strongly recommend that you study the handful of amendments described in Appendix C before using the decade-old CLE articles, so you will know what has changed.

D. Topics Not Covered (*What's Left?*)

The scope of this article is purposefully limited to statutes affecting typical residential planned developments and condominiums at the stages of formation and initial marketing. When you see the list of what is NOT covered in detail, you may wonder "what is left?" The amazing thing is that many of the following topics have their own statutory minefields.

- Environmental and water law
- Land acquisition
- Platting and zoning
- Vehicles for financing infrastructure (such as: TIRZ, 380, NEZ)
- Lot "take down" contracts
- Deeds
- Operation of POAs
- Home mortgage underwriting and financing (such as: FNMA, FHA, VA)
- Management and maintenance of POA common areas
- Collection of POA assessments
- Enforcement of POA rules and restrictions
- Mixed-use or multi-tier planned developments
- Special use condominiums, such as airplane hangars, boat docks, and downtown parking garages
- Colonia housing programs
- Mechanics and materialmans liens
- Camping resorts
- Manufactured housing
- Timeshares
- Executory contracts for deed
- Apartment complexes and landlord-tenant laws
- Commercial, industrial, or agricultural developments

II. IN CASE YOU HAVEN'T HEARD

The following are tidbits of recent events or practices affecting project documents and/or sales contracts for new homes in planned developments and condominiums.

A. First "Anti-Developer" Law - Amendments

Before 2007, citizens who marched on the State Capitol for reforms in HOA laws directed their ire at the older established homeowner-controlled HOAs. Developers did not seem to be targets. Nevertheless, in 2007, the Legislature passed two bills that may be Texas' first "anti-developer" laws in the context of planned developments.

Here is a snapshot of the situation that gave rise to H.B.2402, now TPC §209.013. The developer of a new single family subdivision ties all his development rights to his control of the HOA. The CC&Rs require the developer to relinquish control at a certain stage. When that stage is reached, the homebuyers rightfully demand to control their HOA. Still needing his development

rights, the developer amends the CC&Rs to give himself more time at the HOA's helm - by annexing more lots, or by giving himself more votes per lot, or by changing the percentage of sales that trigger a transfer of control. Hollering "foul," disgruntled homeowners sought a protective law to limit the developer's right to change the rules mid-stream.

The new law became effective September 1, 2007, and applies to restrictions recorded previously. Because the new law is in TPC Chapter 209, it does not apply to condominiums, and applies only to *residential* planned developments.

The new law is not written as clearly as it should have been. It seems to prevent any kind of amendment (for example, annexations) to a developer-created POA document, by any party (even the HOA), during a particular time period. Quoting from the statute, the period is described as "Between the time the developer loses the majority of the voting rights or other form of control of the property owners' association and the time a new board of directors of the association assumes office following the loss of the majority of the voting rights or other form of control."

Many restrictions allow the developer to control the HOA for a period of time, or until a stated percentage of the lots are improved and sold, without any connection to voting rights. Many restrictions also give the developer amendment powers that are independent of the developer's voting rights or control of the HOA. How will those restrictions be interpreted in light of this new law?

The new statute also declares "a provision in a dedicatory instrument that violates this section is void and unenforceable." Does this mean that an amendment adopted during the limbo period is void? Or, does the statute speak to an enabling provision in the CC&Rs that gives the developer powers of amendment and control that are contrary to what the law requires?

DRAFTING TIP. Drafters of amendments to be executed by the developer under its reserved rights in the restrictions should consider adding affirmative statements to address this statute, such as a statement that the HOA is already governed by a homeowner elected board (if that is the case), or a statement that the developer still controls the HOA - rightfully (if that is accurate). I look forward to seeing how the developers' bar responds to this new law.

B. Second "Anti-Developer" Law - Golf Course Redevelopment

Homebuyers who pay a premium for a lot with a golf course view do not want to be deprived of that view. Study this new law if you are trying to redevelop land in the Houston area that has been used as a golf course,

country club, or as a community facility of a residential subdivision. Here is a snapshot of the situation that gave rise to H.B. 3232, now §212.0155 Local Government Code and TPC §82.051(f). The backdrop is Houston subdivisions developed in the 1970s and 1980s around golf courses. A re-developer bought several of the aging golf courses, allowed them to deteriorate, and then got the land replatted for residential development. The situation was repeated often enough that it attracted media attention in the Houston area, ultimately resulting in H.B. 3232. Under the "guidance" of the Houston and Texas Builders Associations, the bill that was enacted into law is much shorter and less onerous than the bill that was introduced. Also, it is bracketed to the Houston area.

DRAFTING TIP. Temper buyers' expectations by disclaiming guaranties of perpetual scenic views and open spaces.

C. Door Closed on Transfer Fee Income to Sellers

After Texas enacted H.B. 2207, now TPC §5.016 (the one dealing with liens), I heard that subdivision developers in California (and possibly other states) regularly impose deed restrictions that result in payments to the developer every time lots change hands - *forever*. The laws in those states allow the practice as long as the "transfer fees" are adequately disclosed to buyers. Our new law forbids that practice in Texas.

D. End of Exclusive Cable TV Contracts?

Please turn to "Television - Service Contracts" in Appendix A of this article for a report of the October 2007 order issued by the Federal Communications Commission pertaining to contracts for exclusive cable service.

E. Single-Family - Recording CC&Rs Pre-Plat

Putting the proverbial cart before the horse, many growth cities in North Texas are requiring subdivision developers to publicly record the CC&Rs before the city will consider reviewing, approving, or recording the subdivision plat. These same growth cities are more-or-less requiring the developers to create mandatory POAs, even for subdivisions with no common areas. It appears the cities are afraid to approve the subdivision plats without assurances that the developer will create the necessary legal structure for the POA. These cities must believe they have no recourse against a developer after the plat is approved. Or perhaps it is just easier for them to deal with the restrictions in connection with the plat. Such premature recording of the CC&Rs often necessitates a subsequent amendment and restatement of the CC&Rs, to conform the CC&Rs to the specifics of the later platted subdivision. It also means that the CC&Rs

must describe the property by metes and bounds, rather than by reference to a recorded subdivision plat.

F. Condos - Recording Declarations Pre-Construction

In every "uniform act state" (of which Texas is one), it is customary during the pre-construction and construction period to deliver a public offering statement with drafts of the proposed condominium documents. This makes sense because the declaration of condominium creates the condominium units which, in most cases, cannot be surveyed until they are constructed. It therefore is disconcerting to hear that your client's construction lender requires recording of the condominium declaration as a condition of loan approval. Record a condominium declaration on vacant land? Whoa! Where does that come from?

When we adopted TUCA in 1993, we tinkered with many of the "canned provisions" in the model Uniform Condominium Act published by the National Conference of Commissioners on Uniform State Laws. One of our changes is biting us in the butt. Here is how it plays out.

A contract to buy a condominium unit from a developer is not binding without a condominium information statement (the Texas version of the public offering statement). The CIS is a package of information about the proposed development, including the proposed condominium documents. A buyer may cancel a purchase contract if he does not receive a CIS.

The condominium declaration is one of several items that must be provided with the CIS. The kicker is that TUCA defines "Declaration" as a recorded document. This is a mistake we made in Texas when we tinkered with the model act's definitions, not thinking through how it affects the CIS.

A prominent lender's attorney has reasoned that buyers may be able to cancel contracts if the CIS they received does not contain a recorded declaration. Lenders who want assurances that sale contracts will be enforceable in case the condo market goes south are requiring that the declaration be recorded as a condition of approving the construction loan. (*Yes, this is similar to the requirement of some cities that CC&Rs be recorded before the city approves the subdivision plat.*). Unfortunately, the "requirement" of recording the condominium declaration pre-construction is turning up on lending checklists everywhere in the state, whether or not it makes sense for a particular project.

G. New Notices for New Home Contracts

New home contracts require new disclosures, thanks to 2007 changes to the TRCCA and the RCLA. If a home comes under the TRCCA, the RCLA notice is not given and new TRCCA notices must be given. If a home does

not qualify for the TRCCA, the RCLA notice must still be given, but . . . the law no longer requires that it be positioned in the contract next to the buyers' signatures, and the wording of the notice is slightly changed. See the "Warranty" sections in Appendix A of this article.

H. Is a Condo Plat a Subdivision Plat?

Theoretically, a condominium plat is (and has always been) a subdivision plat in that it divides one piece of property into parcels that can be sold separately. In practice, however, these two types of plats have been treated differently.

Subdivision plats are approved by governmental platting authorities and are recorded in the plat records of a county (if the county maintains separate plat records) before anything is built on the land. Condominium plats require no governmental approvals and are recorded with the condominium declaration in the condominium records of a county (if the county maintains separate condominium records) after the improvements have been built and measured. Subdivision plats are traditionally two-dimensional, whereas condominium plats are traditionally three-dimensional. Here are 3 signs that things are changing.

One. On July 30, 2004, Texas Attorney General Gregg Abbott issued Opinion No. GA-0223 finding that Hays County has proper authority to regulate the platting of a condominium development "as a subdivision."

Two. The 2007 Texas Legislature amended TUCA to require that a condominium plat presented for recording must be accompanied by original tax certificates from each taxing authority showing no delinquent taxes (*like subdivision plats!*).

Three. In some markets, condominium plats are recorded pre-construction, creating on paper "phantom units" in proposed multi-story buildings which cannot be measured or occupied, but which refute the notion that condominiums must be first built so they can be measured for platting purposes. If a multi-story condominium can be platted before the land is disturbed, requiring public approval of that pre-construction plat is not a great leap.

I. Booby Traps in the Minefield - Different Laws, Same Code Sections

In our legislative system, the lawmakers do not add "the next section" to a code. Instead, they must specify the number of the section to be added. If a code ends with Section 333, and multiple bills are filed to add new sections to the code, each bill will propose to add "Section 334." If more than one of those bills passes, we get multiple laws with the same code sections. For example, in 1999 the Texas legislature enacted three bills, each of which added a new Chapter 207 to the Property Code.

For two years a reference to Chapter 207 of the Property Code required explanation of which of the three Chapters 207. A true trap for the unwary. (*Eventually the codes get amended to renumber those sections.*) Forewarned is forearmed.

The 2007 legislative session left us with the following multiple code sections that are pertinent to this article. Although these particular multiples may be resolved when the Texas legislature meets in 2009, each session is capable of producing multiples booby traps.

- TPC §5.008(b), we currently have three different versions of the required disclosure of property condition, each adding a new piece to the same disclosure.
 - §5.008(b) adding a meth lab disclosure, was enacted in 2007 as H.B. 271.
 - §5.008(b) adding a fire alarm disclosure, was enacted in 2007 as H.B. 2118.
 - §5.008(b) adding a coastal disclosure, was enacted in 2007 as H.B. 2819.
- TPC §5.016, we currently have two new Sections 5.016:
 - §5.016, the warranty disclosure law, was enacted in 2007 as H.B. 1038.
 - §5.016, the lien disclosure law, was enacted in 2007 as H.B. 2207.
- TPC §82.051, there are two new subsections (f):
 - §82.051(f), requiring tax certificates with condo plats, was enacted in 2007 as H.B. 989.
 - §82.051(f), regarding redevelopment of golf courses, was enacted in 2007 as H.B. 3232.

III. STATUTORY FRAMEWORK - OVERVIEW

A. The Local Statutory Environment

For purposes of this article, "local" means everything other than statewide or federal statutes and codes. Attorneys who practice in a single jurisdiction may have complete knowledge of their territory. Attorneys with statewide practices will be challenged to stay on top of local variations on a theme.

1. City Ordinances Pertaining to POAs (generally)

The city in which the property is located may have requirements for the project documents and/or the home sales contract. This is most likely to occur in growth cities or in cities that are experiencing a large number of planned developments. Fortunately, the codes of many cities are available online. The author's research found the following ways of locating city codes.

a. Many cities have their own websites. Some or all of a city's codes may be published on its website. Links to the websites of Texas cities are available on the official website of The State of Texas. Click on "Government" and then "Cities." City websites are also easily found with general search engines, like Google.

b. The Municipal Code Corporation is a national clearinghouse of municipal codes, via its website. In January 2008, 173 Texas cities and 1 county were featured on the website (a 44% increase since 2003, when I last counted). An advantage of using this website is the user-friendly search engine. In some cases, a city's complete code may not be online.

c. American Legal Publishing Corporation maintains a public website with links to the codes of some Texas cities (25 in January 2008).

d. LexisNexis maintains a public website with links to the codes of a couple Texas cities (2 in January 2008).

When searching a city's entire code online, using search phrases like "condominium," "owners association," and "common area" is a good way to start. If no matches are found, expand the search by removing the quote marks.

The requirement for a property owners association, if any, is often found under the big categories of Land Development, Development, and Subdivision, and under subcategories such as Public Sites and Open Spaces, Private Streets, and Roadway Facilities. The specific ordinance within the city's entire body of code is sometimes easy to find, such as Flower Mound, Ch. 90 (Subdivisions), Art. IV (Mandatory Homeowners' Associations), §§90-181 et seq. In some cases the ordinance is free-standing, such as Frisco's Subdivision Regulation Ordinance No. 94-08-19, §6.05 (Provision of Amenities). Some cities separate their development code, such as the Sugar Land Development Code, Ch. 5 (Subdivision Regulations), §5-34 (Homeowners' Association).

If the city code information is particularly relevant for your activity, whatever you find on the public access website should be confirmed with the city's staff or attorney.

2. Site-Specific PD Ordinance Adopted by City

The property may be in a site-specific PD or PDD for which the city has an ordinance. If not available on the city's website, the ordinance is usually available through the city secretary or your client's platting engineer. Consider referencing the PD ordinance in the restrictions. In some cases, unusual provisions of the PD ordinance

should be recited in the restrictions or the architectural guidelines. Keeping in mind that it may be easier to amend the PD ordinance than the restrictions, the document provision you draft should be tied to changes in the public law.

3. Special Districts Created by Local Laws Enacted by Texas Legislature

There are a number of state laws that are inherently local in nature, creating locale-specific special districts for hospitals, water supply, economic development, and navigatable rivers. These statutes pinpoint the property, often by metes and bounds descriptions. In 2005, Texas codified the site-specific district statutes into the Special District Local Laws Code. In addition to the site-specific special districts found in the Special District Local Laws Code, Texas has many special districts that are created pursuant to constitutional or statutory authority, but without a state law that names the particular site-specific district. No matter the origin of the special district, it is a political subdivision of our state.

B. Bracket Bills - State Laws that are less than Statewide in application

The drafting attorney will also want to know whether the property is in a city or county that is subject to one of the several bracketed statutes in the Property Code, some of which have implications for the governing documents. I have tried to identify the bracketed statutes in Appendix A of this article.

Bracket bills is the nickname given to state laws that are neither local laws within the meaning of the Texas Constitution, nor statewide in application, as required by the Texas Constitution. A discussion of bracketing is found in the memorandum of January 23, 2007, from the executive director of the Texas Legislative Council, in Appendix 7 of the Drafting Manual published by the Texas Legislative Council (June 2006 edition).

The authority for bracket bills is Miller v. El Paso County, 150 S.W.2d 1000 (Tex. 1941), which establishes a three-part test to determine if a less-than-statewide bill proposes general law or is an unconstitutional local bill. Most bracket bills limit the applicability of the statute to (1) a stated population bracket, (2) a certain geographic area, or (3) a combination of the two. Some bracket bills are fairly wide in application, such as TPC Chapter 205, which applies to counties with a population of 65,000 or more (48 of 254 counties per 2000 census).

When a bill is bracketed for a particular population, "bracket creep" may be expected to occur. For example, in 1999 the bracket for TPC Chapter 201 was enlarged to apply to cities with populations of 100,000 or more. Because population brackets are customarily based on the last federal census, the 1999 amendment would have been

based on the 1990 census, which shows 19 Texas cities with populations of 100,000 or more. A year later, as a result of the 2000 U.S. census, 24 Texas cities fit the population category of 100,000 or more. Thanks to "bracket creep," 5 more Texas cities get the benefits of Chapter 201 without amendment of the State law.

Some of the bracketing of POA statutes is very creative. The applicability of TPC Chapter 206, for example, is so narrowly tailored as to apply to only two subdivisions in the State. The narrowly bracketed exclusion in TPC §202.007(e) applies to only one development in the State. In each case, the development is not named.

Whether or not such bracketing is constitutional is beyond the scope of this article. However, what is within the scope of this article is the dilemma of identifying which properties are subject to which bracket bills.

Again, attorneys who practice in a single jurisdiction may have complete knowledge of their territory. Attorneys who practice in a wider geographic area will be challenged to apply the bracket bills to particular properties. The state's website (select "About Texas," then "Population and Demographics") has U.S. census population data for all cities and counties, which will be useful in this exercise.

C. Statewide State Laws

Appendix A of this article identifies more than 130 statewide state laws relating to the creation or marketing of planned developments and condominiums.

D. National Lenders

Historically, national institutional mortgage lenders, insurers, and underwriters have exerted a profound influence on the creation, documentation, and marketing of condominiums and planned developments. In the absence of state laws, the underwriting guidelines of Fannie Mae and FHA have acted like de facto federal laws.

In the early years – the 1970s and 1980s – there were four active national institutional lenders or underwriters in this field - Fannie Mae, Freddie Mac, HUD/FHA, and VA. Each had its own criteria for the development, phasing, declarant control, and governing documents for condominiums and PUDs.

Initially, condominiums and PUDs were treated with equal suspicion. The lenders dictated minimum governing requirements for both types of properties. Because much of the housing stock in the United States was purchased with FHA-insured mortgages or with loans that were eligible for purchase by Fannie Mae, the requirements of these national institutional lenders shaped project development and document drafting in the absence of federal laws and state statutes.

In some states, the lenders' requirements supplemented skeletal first-generation statutes. As states began adopting more comprehensive second and third-generation statutes for condominiums and planned developments, the new laws incorporated many of the requirements of the national institutional lenders.

The requirements of national institutional lenders have continually evolved. The lenders have always distinguished between condominiums and PUDs, with similar but separate requirements for each type of development. Perceiving condominiums as more involved with the lives, properties, and pocketbooks of the owners, the lenders have always had more interest in condominiums than PUDs. The first step in the lenders' evolution was distinguishing between "full" PUDs and "deminimus" PUDs. At first, deminimus PUDs received a lower level of review. Later, deminimus PUDs were not reviewed at all.

The second stage of the lenders' evolution occurred in the 2000-2003 era with the elimination of PUD reviews altogether. With 30 years of PUD experience under their belts, the lenders acquired confidence in that type of development. Their worst fears were not realized. PUDs were functioning for better or worse across the country, often in the absence of any state legislation. Accordingly, the national lenders began disengaging from the approval of PUD and PUD documents.

On January 22, 2003, HUD issued its Mortgagee Letter 2003-02, with the following then-dramatic declaration:

"Effective immediately, FHA will no longer require approval of a PUD as a precondition for placing FHA mortgage insurance on a dwelling located in the development. Further, FHA will no longer maintain a list of approved PUDs."

Two years earlier, on August 2, 2000, VA declared "Effective immediately, VA is no longer reviewing and approving Planned Unit Developments (PUD's)."

Just as the lenders once distinguished between "full" or high-maintenance PUDs and "deminimus" or low-maintenance PUDs, they are now beginning to distinguish between different types of condominiums. Ever the creative wordsmiths, the folks who coined "deminimus" have created a review category for "site condominiums" which refers to free-standing or detached condominium units." Site condominiums are eligible for a lower level of review under Fannie Mae and Freddie Mac guidelines.

Texas is in the HUD region headquartered in Denver, Colorado. HUD's Denver Homeownership Center publishes a package of checklists for obtaining FHA project approvals. The current checklists are available on

HUD's website under the Denver Homeownership Center (HOC) Circular Letters, or by calling the Fort Worth Regional Office at (817) 978-5965. As we start 2008, HUD is still using its checklist dated April 25, 2003. HUD influences the drafting of project documents by requiring an attorney's opinion letter stating that all the project documents have been properly filed or recorded and are consistent with legal policies set out in HUD Handbook 4265.1, Change 4, Appendix 24, and comply with all state and local laws.

IV. STATUTE-RELATED DRAFTING ISSUES

Although the tag line on the title of this article is "A 2008 Drafting Guide," the scope of this article is limited to identifying statutes that impact the drafting of sale related materials and POA documents. For a more traditional drafting guide to POA documents, with sample documents, please check out the article written for the 2006 Advanced Real Estate Drafting Course, "Drafting Documents to Create Planned Communities with Owners Associations." Now, getting back to the statutory minefield . . .

A. Tools

The electronic age and public access websites make it easy for the average person to learn about changes in the law, and to monitor the law-change process as it occurs. The hows and whys of the changes are not as evident, being the result of old fashioned "it's who you know" law-making. The following are some of the most widely-used tools for staying abreast of law changes.

1. Source Statute

No matter what resource materials you use, there is no substitute for reading the statute itself. No, not your paperback Code book that is two or more years old. Given the frequency with which real property laws are adopted and revised, a two-year old Code is potentially out of date. Always start with the most current statutes, which are available on the State's website at no charge to the public (even attorneys). At the top of the statutes page, you are informed that the statutes are updated through a particular session number. (The 80th regular session occurred in 2007. 2009 will host the 81st regular session.)

2. Session Laws

There is typically a 3 to 6 month lag between the end of the biennial legislative session at the end of May in odd-numbered years, and the integration of the enacted bills into our statutes. The updated statutes typically appear between September and November in odd-numbered years. With online publishing, the lag is likely to get shorter. During that interim period - after new laws

have been enacted, but before the Codes have been updated with the new laws - you must turn to the "Session Laws" for new laws and new amendments of old laws.

Technically, "Session Laws" refers to the West publication that gives complete texts, final vote totals, dates of approval, and effective dates for all acts and joint resolutions passed by the legislature, which are organized by West into "Chapters." However, attorneys often refer to any compilation of newly enacted laws as the "Session Laws."

During and immediately after the session, the best free resource is the Texas Legislature's website, on which you can search for "enrolled" bills or bills that have been "sent to Governor" for execution. Although the Governor has 30 days after the end of the session in which to veto bills, almost all of the thousands of bills that are enrolled and sent to the Governor will become law.

After the session dust settles, a version of the Session Laws is available on the State's statutes website. Look for "Quick Links - Index to Sections Affected." Select a Code (such as Property) and a Session (such as 80th) and watch the computer generate a list of all Code sections that have been added or amended, with a link to the enacting bills. *An amazing tool!*

3. Enacting Bills

The Texas Legislature maintains a public access website with every bill filed, as well as those that were enacted, starting with the 1989 legislative session. In the parlance of our legislature, the version of the bill that passes both chambers and is sent to the Governor is the "enrolled" version. The enrolled version of an enacted bill is invaluable for tracking the changes to a statute. When a statute is being amended, the bill shows what is being deleted and what is being added, like a redlined comparison of a revised document with the original version. Without that feature, it is more difficult to ascertain what part of a required disclosure was changed by the new law. Also, supplemental materials that are posted on the legislature's website - such as the bill analysis and the witness lists - provide background information about the bill's origins.

4. REPTL Legislative Report

The State Bar's Real Estate Probate and Trust Law Section (REPTL) has a Real Estate Legislative Affairs Committee that swings into action every two years to report on State real estate law changes to the real property bar. The biennial reports are an invaluable asset to our bar. The first presentation of the report is typically at the State Bar's Advanced Real Estate Law Course in July, only 5 or 6 weeks after the session's end. By being published so quickly, the comprehensive report meets a critical need during the "fly-by-the-seat-of-your-pants"

period between the time laws are enacted (end of May) and the time the revised Codes and TREC contracts are published and available for use (November + December). REPTL members have access to the report on the REPTL website.

5. Legislative Council Drafting Manual

The Drafting Manual is an invaluable resource for attorneys interested in legislative drafting and processes. It is available for printing and download on Legislative Council's website.

6. State Bar's Online Library

If you have never used the State Bar's Online Library, you are in for a treat. Located on the State Bar's website, the Online Library is an electronic compilation of all State Bar sponsored CLE articles since 1998. This provides access to CLE articles published for every section of the State Bar. Subscribers have unlimited access, and can download and print as many articles as you want. With the Online Library being open 24:7, there is less need to have a personal copy of every article. It is often a fruitful place to start almost any research task, including searches for forms. Be mindful that statutes may have changed since the CLE articles were written.

7. TREC Contracts

TREC publishes residential contracts, addenda, resale certificates, and sale-related forms for use everywhere in the State of Texas by real estate licenses. TREC contracts are considered "balanced" - the seller is no better protected than the buyer. The forms are updated as needed following legislative sessions. Revisions are usually available about 6 months after the session ends. The contracts and forms are free and downloadable from the TREC website. TREC promulgates contracts created by the State Broker-Lawyer Committee, to which TREC appoints half the members, and the State Bar appoints half the members.

Sidebar Comment. TREC tries to incorporate law changes into a contract format that was not designed for all that it has become, resulting in an unattractive and hard to read contract. Nevertheless, TREC contracts can be useful for ideas - to see how TREC handles a particular disclosure. An attorney who is paid to draft a repeat-use contract for a specific development in a specific location can and should do better than a free public-downloadable TREC form.

B. How to Use Statutes in Documents

Each drafter should be aware of his own philosophy before tackling the drafting of governing documents for a planned development or condominium. There are four

basic approaches for addressing statutory requirements when drafting project documents.

1. No Recitation of Statutes

The first approach assumes that anyone using the document will have access to and be knowledgeable about the applicable laws. Accordingly, there is no reason to restate the statute in the governing documents. On the "pro" side, this approach produces shorter documents containing only those provisions required by statute, not addressed by statute, or that vary from a statute, where permitted. Also, this approach runs fewer risks that the text of the document will become outdated and unenforceable as the law changes. On the "con" side, users of the governing document may not know when statutes apply to a situation. Being unaware, they may try to amend the document to achieve something that is prohibited or regulated by statute.

2. Complete Recitation of Statutes

The second approach is the reverse of the first. It assumes that the document user will never know about applicable statutes unless the pertinent statutory provisions are restated in the document. On the "pro" side, users of the document will be well informed about statutory issues. On the "con" side, this approach produces longer documents which may require periodic amendment as applicable laws change.

3. Partial Recitation of Statutes

The third approach is a hybrid of the first two. It recites those statutory provisions that are most likely to be used by the POA's manager and directors in the daily operation of the property. It references, but does not restate, the statutory provisions that are legally complex or infrequently used. This third approach produces documents that are more utilitarian than the first, and somewhat less voluminous than the second.

4. "Applicable Law"

The fourth approach modifies the third as a defense to the activist legislative era in which we find ourselves. Incorporating or referencing specific statutes risks making the documents less flexible as the laws change and expand. Consider the following suggested responses to this issue.

a. Define and use "Applicable Law" in your documents. For example, "'Applicable Law' means the statutes and public laws and ordinances that pertain to the subject matter of the document provision and that are in effect at the time the provision is applied. Statutes and ordinances specifically referenced in the document are Applicable Law on the date of the document, and are not intended to

apply to the property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances."

b. Add a provision advising users of the document to periodically review statutes and court rulings that may modify or nullify provisions of the document or its enforcement, or may create rights or duties not anticipated by the document.

c. When identifying specific statutes, use "such as" to ward against the statutory references becoming obsolete.

C. **Additional Drafting Considerations**

1. Sale-Related Notices . . . in CC&Rs?

A number of statutes require specific notices to be given in connection with the sale, but do not require that a companion disclosure be included in the publicly recorded POA documents. The drafter should consider whether it would benefit the property and future generations of property owners to also include a form of the statutory sale-related disclosure in the POA documents.

2. TUCA Provisos

TUCA contains a number of default and optional provisions, which the drafter of condominium documents must decide whether or not to trigger in the condominium documents. TUCA's "provisos" are identified in detail in the author's article available on the State Bar's Online Library under the 1994 Advanced Real Estate Drafting Course (selecting course, rather than searching words).

3. Lender Requirements

The drafter should determine what the governing documents must contain or must avoid to satisfy the underwriting guidelines of an institutional lender or insurer, such as Fannie Mae or FHA. Even if the project is not being marketed for the institutional mortgage market, or if there are no applicable requirements, certain traditional mortgagee-protective provisions are commonly used in project documents to give any lender a degree of comfort.

4. ILSFDA - Interstate Land Sales Full Disclosure Act

One federal statute is worthy of special attention - the Interstate Land Sales Full Disclosure Act, as amended, Public Law 90-448, Title XIV, 15 U.S.C. §1701 et seq., Public Law 96-153. Not because it is new. In fact, it is older than some of the attorneys attending the course, having been enacted in 1968. The maddening thing about the Act is that it applies in unexpected ways. Forewarned is forearmed.

a. Origins & Overview

Once upon a time, disreputable real estate promoters sold allegedly improved property in swamps and deserts to trusting consumers in far away places. Those scams led to the ILSFDA, which is enforced by the U.S. Department of Housing and Urban Development. The Act is broad - applying to leases as well as sales, and to nonresidential as well as residential property. Two types of transactions are completely excluded from the Act's coverage - nonbinding reservations and the conveyance of undivided interests that are not accompanied by rights of exclusive use. The following summary of the Act is lifted from the online Catalog of Federal Domestic Assistance:

"Developers that sell, lease, or offer to sell or lease land divided into 100 or more nonexempt lots, using any means or instruments of transportation or communication in interstate commerce or the mails must register with the Department of Housing and Urban Development. The developers must provide all purchasers with a copy of a Property Report which sets forth important facts about the development and the developer. Failure to provide a Property Report prior to the purchaser signing a purchase agreement subjects the developer to statutory and regulatory penalties. Anti-fraud provisions of the Act are applicable to subdivisions of 25 lots or more. Failure to comply with the anti-fraud provisions subjects developers to civil and criminal penalties. Other consumer protection provisions include a seven-day cooling-off period and required contractual provisions. The Act and regulations provide exemption from full disclosure where a subdivision meets certain requirements."

ILSFDA has 2 main compliance components - registration with HUD's Office of Interstate Land Sales Registration (aka OILSR) and anti-fraud requirements. The Act is sufficiently complicated to defy useful checklists and global statements. It defines words more narrowly than common usage.

There are a number of exclusions and exemptions from one or both of the components. Conventional wisdom is to develop and market the property in a way that qualifies for one or more of the Act's exemptions to avoid the HUD registration process, which must be completed before the first contract is signed.

b. Dual or "Full" Exemptions

Some transactions are exempt from both the anti-fraud and the registration requirements of the Act. Three examples of the dual exemption are:

- (1) Sales to builders (as defined in the Act).

- (2) Sales of property with completed homes (as defined in the Act).

- (3) Sales of property under contracts requiring the seller to complete construction within 2 years from the date of contract (as defined in the Act).

c. Anti-Fraud Provisions & Partial Exemptions

Some transactions are exempt from the requirement of registering the property with HUD, but not from the Act's anti-fraud requirements. Of the 4 parts to the Act's anti-fraud provision, the following part is particularly pertinent for this article:

Representing that roads, sewers, water, gas, or electric service or recreational amenities will be provided or completed by the developer without stipulating in the contract that such services or amenities will be provided or completed.

Transactions that are exempt from the Act's registration requirements, but not from the Act's 4-part anti-fraud requirements include the following 3 examples:

- (1) Every lot in the subdivision has at least 20 acres (as defined in the Act).

- (2) Subdivisions with fewer than 100 lots, not counting lots sold to builders (as defined in the Act).

- (3) Beginning with the first lot sale, no more than 12 lots are sold in a 12 month period.

d. Information Sources

Information about the Act is available on HUD's website, including 10 frequently asked questions and a detailed report on qualifying for the Act's exemptions. Our State Bar Online Library has several excellent articles on the Act. Useful materials are also published by ALI-ABA in connection with its annual course *Drafting Documents for Condominiums, Planned Communities, and New Urbanism Developments*. The course materials may be purchased separately.

V. CLOSING REMARKS

With sublime confidence I can guaranty that the laws identified by this article are not exhaustive. Just when I thought I found the "last one," another would pop up from an unexpected source. If you come across a law or ordinance that seems like an oversight for this article, holler "Gotcha!" and then please share the information with me. It takes a village to stay abreast of law changes affecting real estate development and marketing.

I greatly appreciate my colleagues who have authored CLE articles with checklists and analyses of statutes. With apologies to anyone I inadvertently omit, here are some of the many authors whose works I read in the preparation of this article: Michael Baucum, Jennifer I. Bligh, Robert L. Russell ("Bob") Bush, J. Mark McPherson, Robert A. Miller, Ralph Martin Novak, Jr.,

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Finally, a note of heartfelt thanks to my wonderful clients for providing interesting projects and challenging issues that require the location of "safe lanes" through the statutory minefield.

APPENDIXES

APPENDIX A **STATUTES** (Arranged by Alphabetic Attributes)

APPENDIX B **NOTICES** (Arranged by Alphabetic Codes)

APPENDIX C **CHANGES TO TUCA SINCE 1993 ADOPTION** (Arranged by Section Number)

APPENDIX D **LINKS**

APPENDIX A
STATUTES - ARRANGED BY ALPHABETIC ATTRIBUTES
2007-C (Changed in 2007) ■ 2007-N (New in 2007)

1. **AGE-RESTRICTED - CHILDREN** (see also SENIORS)

Housing law does not prohibit age discrimination per se, but does prohibit discrimination against the protected category of "familial status." This protection was created in an era when the most desirable rental communities were adult-only. The developer who wants to create different amenities for adults and children - or to limit use of the pool at certain times to adults only, should be counseled about the presumption of discriminatory intent against the protected familial status category. If you are thinking about getting creative with your documents, check it out first with the local fair housing compliance office. Some age restrictions may be permitted if they are genuinely protective of children, such as "no person under 13 years of age is allowed in the pool unless accompanied by an adult." For information about federal and Texas laws, see Fair Housing Laws below.

2. **AGE-RESTRICTED - SENIORS** (see also CHILDREN)

Purpose. To provide all-adult housing for seniors. Age per se is not a "protected class," like race, religion, and national origin. Although fair housing laws do not prohibit age-based restrictions, they do prohibit discrimination against "familial status" - a protected class. The familial status protection is generally interpreted as a prohibition against "all adult" housing and "all adult" amenities. Although seniors are not a protected class, they have been granted a carve-out from the familial status protections. The requirements for adult-only senior housing are found in federal and state laws, and possibly local ordinances.

Context. Residential only - all types.

Applications. Sales related and POA documents.

Federal Law. 24 C.F.R. Subpart E (§100.300 et seq)- Housing for Older Persons Act of 1995 (HOPA), revising the Fair Housing Amendments Act of 1988.

Texas Statute. TPC §301.043 (*Fair Housing Act, Housing for Elderly Exempted*).

Form Required? See "Age Restricted Communities," by Mary S. Alexander, presented at 2003 Advanced Real Estate Law Course, available on State Bar's OnLine Library.

3. **AIRPORT OR LANDING STRIP** (Private or Public)

Context. Anticipating that buyers will complain about noise and hazards after occupying the property, consider voluntarily disclosing the nature and location of the airstrip or facility, particularly if the airstrip is not readily apparent on a visit to the sales center. Consider adding a disclosure to the sales contract if the property is subject to an aviation easement, if the subdivision plat shows an airport or runway, or if the site is within earshot of an airport.

Statute. NONE.

Other Authority. If the property is within an airport zone, the document that creates the airport zone may have notice requirements for sales of land within the zone. Although rare, a note on a recorded plat may create a notice requirement. For example, a subdivision plat recorded in Tarrant County contains this note: "All homebuyers must be notified and acknowledge that the Hillcrest Airport is currently in operation and will continue to be, on the North side of Keller-Haslet Road."

Notice Required? **NO**, not by statute. Form or content may be mandated by other authority.

4. **ALUMINUM WIRING** (*See Resales-Residential*)

Purpose. To inform buyer about aluminum wiring, which is perceived to be a fire hazard.

Texas Statute. TPC §5.008 (*Seller's Disclosure of Property Condition*).

Disclosure Required? ✓**YES**, with the sales contract in a residential resale. The same seller's report of property condition is required for most condominium conversions.

5. **AMENDMENT OF RESTRICTIONS** (*See Documents - Amendment*)

6. **ANNEXATION BY CITY - SUBJECT TO ANNEXATION**

Purpose. To notify buyer that property is not within the corporate boundaries of a city, but may be annexed to a city at a future date.

Context. All real property located outside the corporate boundaries of a city.

Applications. Sales related (10 excluded transactions).

Texas Statute. TPC §5.011 (*Seller's Disclosure Regarding Potential Annexation*).

Notice Required? ✓**YES**. TPC §5.011 contains the content of the required notice. TREC incorporates the required notice into the body of its contracts as an "If" provision.

7. **ARBITRATION**

Purpose. POA documents may require arbitration of disputes between POA members who did not sign the POA documents.

Context. Nonprofit corporations (such as POAs)

Texas Statute. Civil Practices & Remedies Code Chapter 171 (*General Arbitration*) and Chapter 173 (*Arbitration of Controversies Between Members of Certain Nonprofit Entities*).

Comment. Chapter 173 seems to support the proposition that restrictions, by covenant, can require owners and the POA to arbitrate disputes, even though neither the POA nor its members signed a document voluntarily agreeing to arbitrate disputes. Because Chapter 173 applies to "bylaws," consider putting ADR provisions in bylaws.

Notice Required? Probably not. Although no statute seems to require a disclosure about arbitration in sales contracts or restrictions, case law seems to favor a clear and conspicuous notice where binding arbitration is required.

8. **ARCHITECTURAL CONTROL** (2007-C)

Purpose. Several statutes refer to architectural control as one of the hallmarks of a mandatory POA. It is therefore interesting that no statutes delve into the architectural control function. The problem that often arises with poorly written POA documents is the lack of continuity of architectural control, or the lack of a mechanism to replace committee members, or lack of authority for the committee after the developer departs. In other words, the developer provided architectural controls for only the initial build-out of the subdivision. Chapter 204, which is bracketed to the Houston area and does not apply to condominiums, confirms architectural control as a function of the POA.

Context. POA documents.

Texas Statute. TPC §204.010(18) (*Powers of Property Owners' Association*) and §204.011 (*Architectural Control Committee*). TPC §204.011 was amended in 2007 by H.B. 2218.

9. **ASBESTOS** (See Resales-Residential)

Purpose. To inform buyer about building materials made with asbestos, which is a health hazard.

Texas Statute. TPC §5.008 (*Seller's Disclosure of Property Condition*).

Disclosure Required? **✓YES**, with the sales contract in a residential resale. The same seller's report of property condition is required for most condominium conversions.

10. **CEMETERY or INTERRED BODIES**

If an abandoned cemetery is located on the property, or if an unknown cemetery is discovered on the property, §711.010 of the Texas Health & Safety Code, titled "Unknown or Abandoned Cemetery," prohibits the landowner from constructing improvements on the property in a manner that would further disturb the cemetery until the interred human remains are removed under a written order. §711.041, titled "Access to Cemetery," requires the owner of land surrounding or supporting a cemetery to provide access to cemetery visitors.

Disclosure Required? **NO**, but . . . although Texas law does not require disclosures about cemeteries in sales contracts or restrictions, if the seller knows of a cemetery's existence on or next to the property, the drafting attorney may consider whether and how to voluntarily disclose a cemetery in the sales contract in anticipation of the "creep" factor, and in the restrictions, particularly if the statute creates an access easement across the property to the cemetery.

11. **CITY REQUIREMENTS**

There are many sources of city requirements for a POA's restrictions or sales disclosures. Some are site specific, such as a subdivision plat, planned development ordinance, development agreement, or zoning plan approved by the city for a particular development. Others apply to all POAs in the city, such as city ordinances for the creation and operation of POAs, or the city attorney's criteria for POA restrictions as a condition of plat approvals. The following are examples of city requirements for POAs:

- Notice to Purchasers. Builders are required to post notice in a prominent place in all model homes, sales offices and on all open space areas larger than 20,000 square feet stating that a property association has been established and membership is mandatory for all property owners. The notice shall state at a minimum that the builder shall provide any person upon their request the association documents and a five (5) year projection of dues, income and association expenses. §10.406(g) City of DeSoto Code (2007).
- Maintenance Reserve Fund: Prior to the transfer of the association to the lot owners, the developer must provide an adequate reserve fund to the association for maintenance purposes. A reserve study must be conducted by the developer and reviewed by the City to insure that adequate funds are provided to the association. §6.05.5 City of Frisco Subdivision Ordinance (2007).
- Contents of Homeowners' Association Agreements. At a minimum, the agreements, covenants and restrictions establishing and creating the homeowner's association required herein shall contain and/or provide for the following: . . . Provisions prohibiting the amendment of any portion of the homeowner's association's agreements, covenants or restrictions pertaining to the use, operation, maintenance and/or supervision of any facilities, structures, improvements, systems, area or grounds that are the responsibility of the homeowner's association without the prior written consent of the City. §8.20.6.e. City of Allen Land Development Code (2007).

12. CITY OF HOUSTON - REQUIRED NOTICE

Purpose. By ordinance, City of Houston requires seller and buyer to sign a notice of deed restrictions that is publicly recorded. Seller's failure to comply is a misdemeanor punishable by a \$500 fine.

Context. All real property within Houston city limits.

Applications. Sale related.

Texas Statute. Local Government Code Chapter 212, Subchapter E (the second Subch. E), §212.155 (*Notice to Purchasers*).

City Ordinance. City of Houston Ordinance No. 89-1312, adopted on September 20, 1989, and recorded on September 26, 1989, under Clerk's File No. M 337573, as Film Code No. 157-80-2165, Real Property Records, Harris County, Texas. The recorded ordinance is 6 pages, including definitions and a form of notice, which must be signed by seller and buyer and publicly recorded. Seller's failure to comply is a misdemeanor punishable by fine up to \$500, per seller.

Notice Required? **✓YES**, required by a city ordinance that is specifically authorized by State law. The ordinance provides a form of notice.

13. CLUB MEMBERSHIPS (MANDATORY)

Purpose. A restriction requiring membership in a private club is not valid after 10 years unless renewed by at least 67% of the condominium ownership interests.

Context. Condominiums only.

Applications. Sale related and POA documents.

Texas Statute. TPC §81.112 and §82.0675.

Notice Required? **NO**.

14. COASTAL - OPEN AND RISKY BEACHES (2007-C)

Purpose. To notify buyer that beach front property is hazard-prone and the beach is public property.

Context. All real property along portions of Gulf Intracoastal Waterway

Applications. Sale related.

Texas Statute. Natural Resources Code Chapter 61.

Notice Required? **✓YES**. Prescribed by NRC §61.025 (as amended in 2007 by House Bill 2819). TREC publishes contract addendum.

15. COASTAL - TIDAL WATERS

Purpose. To notify the homebuying public the State has an interest in the tide line.

Context. All real property adjoining and abutting tidally influenced waters.

Applications. Sale related.

Texas Statute. Natural Resources Code Chapter 33.

Notice Required? **✓YES**. Prescribed by NRC §33.135. TREC publishes contract addendum.

16. COLLECTIONS - ASSESSMENTS

Context. In drafting provisions relating to the collection of delinquent assessments - powers of the POA and consequences to the owner - be mindful of the laws pertaining to debt collection in this context, and to the cases that interpret these laws.

Federal Law. 15 U.S.C. §§1692-1692p, as amended in 2006 by Pub. L. 109-351, §§801-02, 120 Stat. 1966 (*Fair Debt Collection Practices Act*).

Texas Statutes.

Condos Only: TPC §§82.102(a), 82.112, 82.113, 82.117.

Residential Subdivisions Only: TPC §209.008-209.011.

All debt collection by third parties: Finance Code Chapter 392 (*Debt Collection*).

17. **COMMUNITY HOMES** (aka "Group Homes")

Purpose. When drafting "residential" limitations on the use of homes in the property, be mindful that Chapter 123 of the Texas Human Resources Code, titled "Community Homes for Disabled Persons Location Act," prohibits restrictions against community homes.

Texas Statutes. TPC §202.003(b), and Human Resources Code §123.003 (*Zoning and Restriction Discrimination Against Community Homes Prohibited*).

18. **CONDOMINIUM - CONVERSION** (see also Resales-Residential)

Purpose. To provide a smooth transition for renters who will be displaced by the conversion, and to inform buyers of the condition of the aged improvements.

Applications. Sales contract and condominium information statement.

Texas Statutes. TUCA - TPC Chapter 82 - has several provisions dealing with conversion, primarily increased disclosures to initial buyers. See §82.154 (*Condominiums with Conversion Buildings*), and §82.160 (*Conversion Buildings*). Under Texas law, the sale of previously occupied dwellings is also subject to TPC §5.008 (*Seller's Disclosure of Property Condition*), which requires a different type of disclosure about the condition of the property.

Disclosure Required? **✓YES.** (1) TPC §5.008 spells out content of disclosure. (2) TPC §82.154 requires a conversion statement signed and dated by declarant, based on the report of an engineer or architect, to be issued with condominium information statement. (3) TPC §82.160 requires a notice of conversion to tenants. When converting a pre-1978 property, pay particular attention to aluminum wiring, asbestos, and lead-based paint, and the applicable disclosures.

Relationship to TPC §5.008. Unrelated to TUCA, TPC §5.008 requires the seller of previously occupied residential property to make certain disclosures to the buyer about the property's condition. Thus, it applies to an apartment complex that is converted to condominium ownership. Because TPC §5.008 is written for use with the resale of a traditional fee-simple detached single-family house, it can be challenging to apply the statutory disclosure requirements to a multi-unit condominium conversion with common elements. Also, because TUCA has its own disclosure requirements about the property's condition, it is tempting to think that TPC §5.008 may not apply to a newly renovated and converted condominium development.

Resource. Author thoroughly covered condominium conversion sales in a 1995 article, *Condominium Sales & Resales Under the Texas Uniform Condominium Act*, written for the State Bar of Texas 1995 Advanced Real Estate Drafting Course. Because the pertinent provisions of TUCA have not changed since 1995, that article is still relevant and can be obtained from the State Bar's Online Library by selecting the course.

19. **CONDOMINIUMS - CREATION**

Context. TUCA - TPC Chapter 82 - is the enabling statute for new condominiums, both newly constructed and newly converted. TUCA regulates the creation of condominiums, with many implications for the governing documents. The author thoroughly covered the drafting implications of the then-new law in her 1994 article for

the State Bar's Advanced Real Estate Drafting Courses. Because TUCA is largely unchanged since 1994, that article is still pertinent and more substantive than any summary that would be included here. In December 2007, the State Bar posted the 1994 article on the Online Library. The few amendments of TUCA enacted since its 1993 adoption, as shown on Appendix C of this article, should also be studied.

Texas Statute. TPC Chapter 82, (Texas) Uniform Condominium Act, referred to as "TUCA."

Resource 1. Two articles by Sharon Reuler are available on the State Bar's Online Library, and contain some forms. (1) *Texas Uniform Condominium Act*, written for the State Bar of Texas 1994 Advanced Real Estate Drafting Course. The few post-1994 changes to TUCA are identified in Appendix C of this article. Because TUCA is largely unchanged since 1994, that article is still relevant. (2) *Drafting Documents to Create Planned Communities with Owners Associations*, written for the State Bar of Texas 2006 Advanced Real Estate Drafting Course. Although the article is written for non-condominium planned developments, the annotated POA Bylaws and Articles are useful with condominiums.

Resource 2. Two articles by William H. Locke, Jr., are available on the State Bar's Online Library, and contain forms. *Documentation for the To-Be-Built Office Condominium*, written for the State Bar of Texas 2005 Advanced Real Estate Drafting Course, and *Papering the Deal: From Land Acquisition to Development*, written for the State Bar of Texas 2004 Advanced Real Estate Law Course.

20. CONDOMINIUMS - MARKETING

Context. TPC Chapter 82, the Uniform Condominium Act (known as "TUCA"), is the enabling statute for new condominiums, both newly constructed and newly converted. TUCA regulates the marketing of condominiums. The author covered the unit marketing aspects of the then-new law in her 1994 and 1995 articles for the State Bar's Advanced Real Estate Drafting Courses. Because TUCA is largely unchanged since 1994, those articles are still pertinent and more substantive than any summary that would be included here. In December 2007, the State Bar posted the 1994 and 1995 articles on the Online Library. The few amendments of TUCA enacted since its 1993 adoption are described in the foregoing article.

Applications. Sales contract and condominium information statement.

Texas Statute. TPC Chapter 82, (Texas) Uniform Condominium Act.

Documents Required? **✓YES.** As of December 2007, TREC does not publish a sales contract or condominium information statement for sales by a declarant or by builders of new units.

Resource 1. Two articles by Sharon Reuler are available on the State Bar's Online Library, and contain forms. (1) *Texas Uniform Condominium Act*, written for the State Bar of Texas 1994 Advanced Real Estate Drafting Course. The few post-1994 changes to TUCA are identified in Appendix C of this article. Because TUCA is largely unchanged since 1994, that article is still relevant. (2) *Condominium Sales & Resales Under the Texas Uniform Condominium Act*, written for the State Bar of Texas 1995 Advanced Real Estate Drafting Course.

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21. CONDOMINIUM PLAT (2007-C)

Purpose. The condominium plat is one of the three most important components of the condominium declaration - the other two being the property description and the allocation of interests. Typically, the condominium plat is prepared on letter-size paper and recorded with the declaration as an exhibit. However, the condominium plat may be recorded separately from the declaration. To create a condominium requires public recording of both the declaration and the condominium plat (usually accomplished as one step).

Context. Condominiums only.

Applications. POA documents.

Texas Statute. TPC §82.059 (Plats & Plans) and §82.051 (Creation of Condominium).

Other Authority. See Opinion No. Opinion No. GA-0223, issued by the Attorney General of Texas on July 30, 2004, Re: Whether a condominium development is a subdivision subject to county regulation under Local Government Code chapter 232.

Form Required? ✓YES. TPC §82.059 lists the requirements for a condominium plat, including a certification by a licensed engineer or architect. TPC §82.051(f) adds additional requirements.

Comment. The 2007 Texas legislature enacted 2 bills, each of which added a plat provision as Subsection (f) to §82.051. See Appendix C of this article.

22. **CONSERVATION DISTRICT** (*see Overlay District*) (*distinct from Conservation Easement*)

23. **CONSERVATION EASEMENT** (*distinct from Conservation District*)

Under Texas law, conservation easements are the result of an agreement between the land owner and a government or a public interest organization to not disturb certain attributes of the land, as evidenced by a publicly recorded easement instrument. The enabling legislation is Texas Natural Resources Code, Chapter 183 (*Conservation Easements*), including Subchapter B, which pertains to Agricultural Conservation Easements. The publicly recorded easement agreement is the only disclosure required by the statute. The seller or developer of land that is partly burdened with a conservation easement may be advised to voluntarily disclose the easement's existence in the sales contract and possibly in the restrictions.

24. **CONSPICUOUSNESS**

Some of the disclosure statutes cited in this article require that a provision be "conspicuous." Sometimes the method of being conspicuous is detailed in the statute. Texas Codes use the term "conspicuous" in 161 provisions in Codes ranging from Agriculture to Water. If you question whether a contract or document disclosure is sufficiently conspicuous, that is a sign that it needs more oomph. As noted in the UCC, "Whether a term is "conspicuous" or not is a decision for the court." Better to err on the side of being overly conspicuous.

Texas Statute. Business & Commerce Code §1.201(10) defines "conspicuous" for purposes of the UCC as: "so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following: (A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and (B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

25. **CONTRACT FOR DEED (EXECUTORY CONTRACT)**

Not covered by this article, except to note that Texas has a body of law dealing with Executory Contracts, which are commonly called "contracts for deed," such as Subchapter D (§5.061 et. seq. - *Executory Contract for Conveyance*) of Chapter 5, Texas Property Code. A number of consumer notices are required by the statutes.

26. **CORPORATION**

Purpose. Condominium associations must incorporate before the first unit closing. Incorporation is optional for other types of mandatory property owners associations. Nevertheless, it has been customary to incorporate non-condominium POAs because the national institutional lenders include articles of incorporation among the 3

project documents that must be reviewed for compliance with the lender's underwriting requirements. If the POA is incorporated, it is usually as a nonprofit.

Context. Condominium associations (required) and other POAs (optional).

Applications. POA documents.

Texas Statutes. Business Organizations Code Chapters 20 + 22; TPC §82.101 (condominiums); TPC §§204.004 + 204.009 (non-condos, Chapter 204 is bracketed to the Houston area).

Form Required? **✓YES.** Incorporation requires the filing of a "Certificate of Formation" with the Secretary of State of Texas, who provides forms and invites online filings via "SOS Direct." See annotated articles of incorporation for a planned community, in "Drafting Documents for Condominiums and Planned Communities," by Sharon Reuler for the State Bar's 2006 Advanced Real Estate Drafting Course.

27. **COUNTY - UNINCORPORATED** (*see Annexation by City*)

28. **DEVELOPMENT AGREEMENTS**

Several sections of the Texas Local Government Code authorize owners of land to make certain agreements with a city, county, or district for development of the land, and for future annexation of land in a city's ETJ. Pertinent sections include §212.172, §372.114-116.

Disclosure Required? **NO.** If land is subject to a development agreement, the statutes do not require that a memorandum of agreement be publicly recorded, or that sellers disclose the agreement to buyers of the land. Indeed, Local Government Code §212.172(f) stipulates that the development agreement negotiated with a city is not binding on "any end-buyer of a fully developed and improved lot within the development, except for land use and development regulations that may apply to a specific lot."

29. **DIRECTORS & OFFICERS LIABILITY**

Purpose. To shield volunteer directors and officers from lawsuits so they will be encouraged to serve.

Context. POA documents.

Texas Statutes. Business Organizations Code §7.001 (*Limitation of Liability of Governing Person*). Also, Civil Practice & Remedies Code, Chapter 84 (*Charitable Immunity & Liability Act of 1987*), which defines a "charitable organization" to include "a homeowners association as defined by Section 528(c) of the Internal Revenue Code of 1986".

Notice Required? **NO.** Be aware of the statutory protections when drafting POA documents, so as not to void them.

30. **DISCRIMINATION** (*see also Fair Housing Laws*)

Purpose. Voids certain discriminations in restrictions and deeds.

Context. All real property.

Applications. POA documents. (Caution the well-intentioned client who wants to develop a residential enclave for persons who share certain cultural values.)

Texas Statute. TPC §5.026 (*Discriminatory Provisions*) states in part: "If a restriction that affects real property, or a provision in a deed that conveys real property or an interest in real property, whether express or incorporated by reference, prohibits the use by or the sale, lease, or transfer to a person because of race, color, religion, or national origin, the provision or restriction is void."

31. DISTRICTS (IN GENERAL)

The below named districts, also known as "special districts," are special governmental entities created by the Texas constitution, or by Texas statute, or by a local government to perform certain functions on behalf of the government. Planned developments and condominiums may be created in these districts. The enabling statutes of many special districts require a disclosure about the district to be given in sales contracts so the buyer has notice that the property is located in a district that levies assessments and issues bonds. None of the enabling statutes require that a disclosure about the district also be included in the restrictions. The attorney drafting documents for a new development should inquire whether the property is located in one or more special districts. He will need information about the special district for the sales contract. Consider giving a notice of a special district in sales contract even if not required by statute to do so. The drafting attorney should also consider whether and how to weave information about the special district into the governing documents created for the planned development or condominium.

32. DISTRICTS - AGRICULTURAL DEVELOPMENT DISTRICT

Purpose. To notify buyer that property is located in a taxing district.

Context. All real property located in this type of district.

Applications. Sale related. Buyer signs Notice with sales contract and at closing (which is recorded).

Texas Statute. Agriculture Code §60.063 (*Notice to Purchasers*).

Notice Required? **✓YES.** Statute directs the district's board to publish the district's notice. TREC contracts provide check-off of whether land is in Agricultural Development District. Notice is required unless contract requires seller to give buyer a title insurance commitment before closing and buyer is entitled to terminate the contract because property is in this type of district.

33. DISTRICTS - CONSERVATION AND RECLAMATION DISTRICT

Purpose. To notify buyer that property is located in a taxing district.

Context. All real property located in this type of district.

Applications. Sale related.

Texas Statute. Texas Constitution Article 3, §§49-c, 49-d-1, and Article 16, §59; Water Code §49.452.

Notice Required? **✓YES.** Texas Water Code §49.452 prescribes 3 forms of notices that must be given with the sales contract, depending on the location of the district in relation to a municipality. Notices are typically issued by the district. TREC contracts have an "IF" provision in the body of the contract that states seller's obligation to provide notice to buyer.

34. DISTRICTS - COUNTY ASSISTANCE DISTRICT

Purpose. To notify buyer that property is in a district that can impose a sales tax (not property tax).

Context. All real property located in this type of district.

Applications. Sale related.

Texas Statute. Local Government Code Chapter 387.

Notice Required? **NO**, not by seller. Consider voluntary notice of an additional sales tax.

35. DISTRICTS - DRAINAGE DISTRICT

Purpose. To notify buyer that property is located in a taxing district.

Context. All real property located in this type of district.

Applications. Sale related.

Texas Statute. Water Code Chapter 56 (under Title 4 General Law Districts), and §49.452.

Notice Required? ✓YES. Texas Water Code §49.452 prescribes 3 forms of notices that must be given with the sales contract, depending on the location of the district in relation to a municipality. Notices are typically issued by the district. TREC contracts have an "IF" provision in the body of the contract that states seller's obligation to provide notice to buyer.

36. DISTRICTS - EMERGENCY SERVICES DISTRICT

Purpose. To notify buyer that property is in a district that can levy property and sales taxes, and issue bonds.

Context. All real property located in this type of district.

Applications. Sale related.

Texas Statute. Local Government Code Chapter 344 (*Fire Control, Prevention, and Emergency Medical Services District Act*), Health & Safety Code Chapter 775 (*Emergency Services District*) & Chapter 776 (*Emergency Services Districts in Counties of 125,000 or Less*)

Notice Required? NO. Consider voluntary notice of tax liability to district.

37. DISTRICTS - FRESH WATER SUPPLY DISTRICT

Purpose. To notify buyer that property is located in a taxing district.

Context. All real property located in this type of district.

Applications. Sale related.

Texas Statute. Water Code Chapter 53 (under Title 4 General Law Districts), and §49.452.

Notice Required? ✓YES. Texas Water Code §49.452 prescribes 3 forms of notices that must be given with the sales contract, depending on the location of the district in relation to a municipality. Notices are typically issued by the district. TREC contracts have an "IF" provision in the body of the contract that states seller's obligation to provide notice to buyer.

38. DISTRICTS - GROUNDWATER CONSERVATION DISTRICT

Purpose. To notify buyer that property is located in a taxing district.

Context. All real property located in this type of district.

Applications. Sale related.

Texas Statute. Water Code Chapter 36.

Notice Required? NO. Consider voluntary notice of tax liability to district. Also, Water Code §36.021 requires the district to publicly record a description of the district's boundaries.

39. DISTRICTS - HOMESTEAD PRESERVATION DISTRICT (2007-N)

Not covered by this article, except to note the existence of districts created under Texas Local Government Code Chapter 373A as vehicle for a city to provide affordable housing via a trust that owns the land. Enacted 2007 by H.B. 470.

40. DISTRICTS - INDUSTRIAL DISTRICT IN ETJ

Not covered by this article, except to note the existence of districts created under Texas Local Government Code §42.044.

41. DISTRICTS - IRRIGATION DISTRICT

Purpose. To notify buyer that property is located in a taxing district.

Context. All real property located in this type of district.

Applications. Sale related.

Texas Statute. Water Code Chapter 58 (under Title 4 General Law Districts), and §49.452.

Notice Required? **✓YES.** Texas Water Code §49.452 prescribes 3 forms of notices that must be given with the sales contract, depending on the location of the district in relation to a municipality. Notices are typically issued by the district. TREC contracts have an "IF" provision in the body of the contract that states seller's obligation to provide notice to buyer.

42. DISTRICTS - LEVEE IMPROVEMENT DISTRICT

Purpose. To notify buyer that property is located in a taxing district.

Context. All real property located in this type of district.

Applications. Sale related.

Texas Statute. Water Code Chapter 57 (under Title 4 General Law Districts), and §49.452

Notice Required? **✓YES.** Texas Water Code §49.452 prescribes 3 forms of notices that must be given with the sales contract, depending on the location of the district in relation to a municipality. Notices are typically issued by the district. TREC contracts have an "IF" provision in the body of the contract that states seller's obligation to provide notice to buyer.

43. DISTRICTS - MUNICIPAL DEVELOPMENT DISTRICT

Purpose. To notify buyer that property is located in a district that can levy sales tax and issue bonds, but may not levy property tax.

Context. All real property located in this type of district.

Applications. Sale related.

Texas Statute. Local Government Code Chapter 377.

Notice Required? **NO.** Consider voluntary notice of sales tax liability to district.

44. DISTRICTS - MUNICIPAL MANAGEMENT DISTRICT

Purpose. To notify buyer that property is located in a district that can impose impact fees, levy property taxes, and issue bonds.

Context. All real property located in this type of district.

Applications. Sale related.

Texas Statute. Local Government Code Chapter 376.

Notice Required? **NO.** Consider voluntary notice of tax liability to district.

45. DISTRICTS - MUNICIPAL UTILITY DISTRICT

Purpose. To notify buyer that property is located in a taxing district.

Context. All real property located in this type of district.

Applications. Sale related.

Texas Statute. Water Code Chapter 54 (under Title 4 General Law Districts), and §49.452

Notice Required? **✓YES.** Texas Water Code §49.452 prescribes 3 forms of notices that must be given with the sales contract, depending on the location of the district in relation to a municipality. Notices are typically issued

by the district. TREC contracts have an "IF" provision in the body of the contract that states seller's obligation to provide notice to buyer.

46. DISTRICTS - NAVIGATION DISTRICT

Purpose. To notify buyer that property is located in a taxing district.

Context. All real property located in this type of district.

Applications. Sale related.

Texas Statute. Water Code Chapters 60-63 (under Title 4 General Law Districts), and §49.452

Notice Required? **✓YES.** Texas Water Code §49.452 prescribes 3 forms of notices that must be given with the sales contract, depending on the location of the district in relation to a municipality. Notices are typically issued by the district. TREC contracts have an "IF" provision in the body of the contract that states seller's obligation to provide notice to buyer.

47. DISTRICTS - PLANNED UNIT DEVELOPMENT DISTRICT (in ETJ)

Texas Local Government Code §42.046 addresses an unusual set of circumstances - land within a city's ETJ that had been annexed by the city for limited purposes only, and then subsequently de-annexed from the limited purposes and put into a Planned Unit Development District by agreement between the land owners and the city. (*This statute was obviously tailored for a unique situation.*) The statute requires public recording of the agreement between property owners and city, which provides constructive notice of the district. If this circumstance applies to your site, consider adding a disclosure to the sales contract, although not required by statute.

48. DISTRICTS - PUBLIC IMPROVEMENT DISTRICT (PID)

Purpose. To notify buyer that property is located in a taxing district.

Context. All real property located in this type of district.

Application. Sale related.

Texas Statute. Local Government Code Chapter 372, Subchapter A, and TPC §5.014.

Notice Required? **✓YES.** Form of notice prescribed by TPC §5.014. TREC contract has "IF" disclosure in the body of contract.

49. DISTRICTS - REGIONAL DISTRICT

Purpose. To notify buyer that property is located in a taxing district.

Context. All real property located in this type of district.

Applications. Sale related.

Texas Statute. Water Code Chapter 59 (under Title 4 General Law Districts), and §49.452

Notice Required? **✓YES.** Texas Water Code §49.452 prescribes 3 forms of notices that must be given with the sales contract, depending on the location of the district in relation to a municipality. Notices are typically issued by the district. TREC contracts have an "IF" provision in the body of the contract that states seller's obligation to provide notice to buyer.

50. DISTRICTS - ROAD DISTRICT

Purpose. To notify buyer that property is located in a taxing district.

Context. All real property located in this type of district.

Applications. Sale related.

Texas Statute. Transportation Code Chapter 257 (*Road Districts*).

Notice Required? **✓YES,** by Transportation Code §257.005, which specifies contents of notice.

51. DISTRICTS - ROAD UTILITY DISTRICT

Purpose. To notify buyer that property is located in a taxing district.

Context. All real property located in this type of district.

Applications. Sale related.

Texas Statute. Transportation Code Chapter 441 (*Road Utility Districts*).

Notice Required? **NO.** Consider voluntary notice.

52. DISTRICTS - RURAL FIRE PREVENTION DISTRICT (*see Emergency Services District*)

Formerly created under Health & Safety Code Chapter 794, Rural Fire Prevention Districts were converted to Emergency Services Districts in 2005. Health & Safety Code §775.026 addresses the conversion process.

53. DISTRICTS - SPECIAL UTILITY DISTRICT

Purpose. To notify buyer that property is located in a taxing district.

Context. All real property located in this type of district.

Applications. Sale related.

Texas Statute. Water Code Chapter 65 (under Title 4 General Law Districts), and §49.452.

Notice Required? **✓YES.** Texas Water Code §49.452 prescribes 3 forms of notices that must be given with the sales contract, depending on the location of the district in relation to a municipality. Notices are typically issued by the district. TREC contracts have an "IF" provision in the body of the contract that states seller's obligation to provide notice to buyer.

54. DISTRICTS - STORMWATER CONTROL DISTRICT

Purpose. To notify buyer that property is located in a taxing district.

Context. All real property located in this type of district.

Applications. Sale related.

Texas Statute. Water Code Chapter 66 (under Title 4 General Law Districts), and §49.452.

Notice Required? **✓YES.** Texas Water Code §49.452 prescribes 3 forms of notices that must be given with the sales contract, depending on the location of the district in relation to a municipality. Notices are typically issued by the district. TREC contracts have an "IF" provision in the body of the contract that states seller's obligation to provide notice to buyer.

55. DISTRICTS - TAX INCREMENT FINANCE DISTRICT

Texas Statute. Tax Code, Chapter 311

Notice Required? **NO** specific notice required

56. DISTRICTS - UNDERGROUND WATER CONSERVATION DISTRICT

Purpose. To notify buyer that property is located in a taxing district.

Context. All real property located in this type of district.

Applications. Sale related.

Texas Statute. Water Code Chapter 52 (under Title 4 General Law Districts), and §49.452.

Notice Required? **✓YES.** Texas Water Code §49.452 prescribes 3 forms of notices that must be given with the sales contract, depending on the location of the district in relation to a municipality. Notices are typically issued by the district. TREC contracts have an "IF" provision in the body of the contract that states seller's obligation to provide notice to buyer.

57. DISTRICTS - WATER CONTROL & IMPROVEMENT DISTRICT

Purpose. To notify buyer that property is located in a taxing district.

Context. All real property located in this type of district.

Applications. Sale related.

Texas Statute. Water Code Chapter 51 (under Title 4 General Law Districts), and §49.452.

Notice Required? ✓**YES.** Texas Water Code §49.452 prescribes 3 forms of notices that must be given with the sales contract, depending on the location of the district in relation to a municipality. Notices are typically issued by the district. TREC contracts have an "IF" provision in the body of the contract that states seller's obligation to provide notice to buyer.

58. DISTRICTS - WATER IMPROVEMENT DISTRICT

Purpose. To notify buyer that property is located in a taxing district.

Context. All real property located in this type of district.

Applications. Sale related.

Texas Statute. Water Code Chapter 55 (under Title 4 General Law Districts), and §49.452.

Notice Required? ✓**YES.** Texas Water Code §49.452 prescribes 3 forms of notices that must be given with the sales contract, depending on the location of the district in relation to a municipality. Notices are typically issued by the district. TREC contracts have an "IF" provision in the body of the contract that states seller's obligation to provide notice to buyer.

59. DOCUMENTS - AMENDMENT (CONDOS)

Purpose. To ensure that developers and owners have certain rights and limits to amend the declaration of condominium.

Context. Condominiums only.

Applications. POA documents. Be mindful of the many amendment provisions when drafting POA documents and when drafting amendments.

Texas Statutes. TPC Chapter 82 (TUCA) addresses the creation and operation of condominiums, and therefore has amendment provisions throughout, including some amendment rights that may be exercised by the declarant only. The primary amendment sections are §82.067 (*Amendment of Declaration*), and §82.82.070 (*Meeting at Which Amendments May be Adopted*).

60. DOCUMENTS - AMENDMENT ENABLING (PLANNED DEVELOPMENTS)

Background. Most of the amendment statutes try to cure badly drafted subdivision restrictions that (1) were not written to be perpetual, (2) lack amendment or extension provisions, or (3) require unanimous consents to amend. Residents of those subdivisions - in many parts of the State - have implored their State lawmakers to "fix" their woeful situations by statute, resulting a crazy quilt of bracketed statutes. In November 2007, House Speaker Tom Craddick gave the House Committee on Urban Affairs an Interim Charge to "research and update legislation that permits residential neighborhoods whose deed restrictions have lapsed to reinstate those deed restrictions or create needed deed restrictions through a petition committee by expanding them to more areas." The Interim Report is expected in November 2008.

Context. Planned developments only.

Applications. POA documents.

Texas Statutes. Unlike condos, planned developments in Texas are not created and operated under a single comprehensive statewide statute.

- TPC Chapter 201 (*Restrictive Covenants Applicable to Certain Subdivisions*). Provides a petition process for amending otherwise-impossible-to-amend restrictions. For subdivisions in cities of at least 100K or in unincorporated areas in and around Harris County.
- TPC Chapter 204 (*Powers of Property Owners' Association Relating to Restrictive Covenants in Certain Subdivisions*), §204.005 (*Extension of, Addition to, or Modification of Existing Restrictions*) is bracketed to the Houston area (Harris, Galveston, and Montgomery Counties).
- TPC Chapter 205 (*Restrictive Covenants Applicable to Revised Subdivisions in Certain Counties*). Bracketed to counties with at least 65K people. §205.004 allows a majority of owners to amend the declaration to comply with HUD/FHA or VA requirements.
- TPC Chapter 206 (*Extension of Restrictions Imposing Regular Assessments in Certain Subdivisions*) is bracketed a particular 4,600 lot subdivision in the Houston area.
- TPC Chapter 208 (*Amendment and Termination of Restrictive Covenants in Historic Neighborhoods*) is bracketed to Houston.
- TPC Chapter 210 (*Extension of Modification of Residential Restrictive Covenants*) is bracketed to counties with populations between 170K and 175K (possibly Smith County), and between 45K and 75K if adjacent to a county in the 170K-175K bracket (possibly Cherokee, Henderson, and Rusk).
- TPC Chapter 211 (*Amendment and Enforcement of Restrictions in Certain Subdivisions*) is bracketed to residential subdivisions in the unincorporated area of a county with a population of less than 65,000 (that applies to most of the 254 counties in Texas), if the restrictions do not provide for amendment or if they require unanimous consents to amend.

61. DOCUMENTS - AMENDMENT LIMITING (PLANNED DEVELOPMENTS) (2007-N)

Context. Planned developments only.

Applications. POA documents.

Texas Statutes. TPC Chapter 209 (*Texas Residential Property Owners Protection Act*) sustained two changes in 2007 to limit amendment powers. It should be noted that except for the 2007 additions, Chapter 209 does not address the amendment process in any way.

- Easements. TPC §209.012 (*Restrictive Covenants Granting Easements to Certain Property Owners' Associations*). HOA many not amend the restrictions to grant an easement across a lot without the lot owner's consent. Enacted 2007 by H.B. 2402.
- Declarant-Control. TPC §209.013 (*Authority of Association to Amend Dedicatory Instrument*). Developer or developer-controlled POA may not amend restrictions between time developer loses voting control and election of new board. Enacted 2007 by H.B. 2402.

§209.013. AUTHORITY OF ASSOCIATION TO AMEND DEDICATORY INSTRUMENT.

- (a) A dedicatory instrument created by a developer of a residential subdivision or by a property owners' association in which the developer has a majority of the voting rights or that the developer otherwise controls under the terms of the dedicatory instrument may not be amended during the period between the time the developer loses the majority of the voting rights or other form of control of the property owners' association and the time a new board of directors of the association assumes office following the loss of the majority of the voting rights or other form of control.

(b) A provision in a dedicatory instrument that violates this section is void and unenforceable.

62. DOCUMENTS - CONSTRUCTION

TPC §202.003 requires "liberal" construction of restrictive covenants, thus reversing common law of "strict" or "narrow" construction. Good practice to include rules of construction in the documents.

63. DOCUMENTS - PREPARATION

Texas Government Code Chapter 83 (*Certain Unauthorized Practice of Law*) provides that only Texas attorneys and brokers may be compensated for preparing documents affecting title to real property.

64. DOCUMENTS - RECORDING

Texas Statutes - Specific to Condos and Planned Developments

Since 1999, TPC §202.006 has required that all "dedicatory instruments" of a property owners association be recorded in the real property records of the county in which the property is located. In determining how to apply TPC §202.006, consider these two issues. First, the statute artificially defines "dedicatory instruments" to include "all governing documents" of the POA. This means that governing documents that had not previously been recorded - such as bylaws - must be prepared for recording, with an acknowledgment and a property description. Second, it is not clear whether "residential" as used in the definition of "property owners association" modifies only "subdivision" or modifies the entire list of 5 types of planned developments.

Texas Statutes - Condominiums Only. TPC §82.051(a) addresses execution and recording of a condominium declaration. TPC §82.051(c) authorizes correction of defective execution on a recorded condominium declaration.

Texas Statutes - Recording Generally.

- §11.001 dictates place of recording.
- §11.008, as amended 2007 by HB 2061, requires confidentiality notice on deeds and deeds of trust to or from an individual (not an entity).
- §12.001 requires signature and acknowledgment on each instrument.
- §12.0011 addresses original signature on paper & electronic documents (**2007-N**)
- §13.002 states that recording is constructive notice.

65. EARNEST MONEY

To protect condominium buyers from loss of earnest money on a to-be-built project, the Texas Uniform Condominium Act requires that earnest money be held by a third party. Refer to TPC §82.158 (*Escrow of Deposits*).

66. ELECTRO-MAGNETIC FIELDS (EMF)

In the 1980s the public was alerted to potential health hazards of being close to aerial power lines. The website of the National Institute of Environmental Health Sciences contains information about EMF, including a 65-page report published in June 2002 which downplays but does not completely refute the alleged risks from EMF exposure. Although no statute requires disclosure of aerial power lines or electric substation, seller may voluntarily include a disclosure of nearby EMF lines in the sales contract to avoid buyer's claim "If I had known before I bought . . .".

67. ENERGY CONSERVATION - LANDSCAPING

Purpose. To protect the rights of home owners to create compost, to use rainbarrels, and to install underground and drip irrigation systems.

Context. Residential real estate - all types.

Applications. POA documents - certain prohibitions may be void. Subsection (a) supports the home owner. Subsection (b) supports the HOA's right to regulate.

Texas Statute. TPC §202.007 (*Certain Restrictive Covenants Prohibited*).

Form Required? **NO**, but be mindful of this law in writing restrictions and rules.

Bracket. Although this is a State-wide law, Subsection (e) is a bracketed exclusion for the Las Colinas development in Irving, Texas.

68. ENFORCEMENT BY HOA

Purpose. To provide due process for unit owners charged with violations of restrictions or delinquent assessments.

Context. All real property with mandatory owners association.

Applications. POA documents. (Be mindful of these laws when drafting enforcement provisions.)

Texas Statutes. (1) TPC §82.102(a)(12), (c)+(d), for condominiums, (2) TPC Chapter 209 (*Texas Residential Property Owners Protection Act*) for non-condo POAs, (3) TPC §204.010(a)(11) for non-condo POAs in bracketed areas, (4) TPC Chapter 202 (*Construction and Enforcement of Restrictive Covenants*), (5) Government Code §27.034 (*Deed Restriction Jurisdiction (of justice courts)*), (6) TPC Chapter 203 (*Enforcement of Land Use Restrictions in Certain Counties (by county attorney)*).

69. ENGLISH LANGUAGE

TPC §11.002 (*English Language*) establishes English as the official language of real property records in Texas. If any part of a document is not in English, it must have a certified translation into English to qualify for recording. Applies even to notary information.

70. FAIR HOUSING LAWS (See also Age-Restricted, Discrimination, and Handicap)

Purpose. The Fair Housing Acts should be familiar to every attorney who works with any aspect of residential real estate. In addition to the federal Fair Housing Act, Texas has an equivalent state statute, and a number of cities have fair housing ordinances based on the federal law. As relates to project documents for planned developments and condominiums, the Fair Housing Acts address residential restrictions, occupancy restrictions, age restrictions, and architectural adaptations for handicapped persons. Also, the Fair Housing Acts prohibit discrimination in housing against 7 protected classes - race, color, national origin, religion, sex, familial status, and handicap.

Context. Residential only - all types.

Application. POA documents.

Federal Laws. Fair Housing Act, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§3601 - 3619.42.

Texas Statute. TPC Chapter 301 (*Texas Fair Housing Act*).

City Ordinance. Most large cities have equivalent fair housing ordinances, such as Dallas City Code Chapter 20A.

Notice Required? **NO**.

71. FENCE DAMAGE LIEN (2007-N)

Purpose. This unusual new law may prove to be handy for planned developments with miles of perimeter fencing. If a vehicle damages a fence, the fence owner can take a lien against the vehicle. Also, provides method of dealing with a vehicle that is abandoned at the site of the fence damage.

Texas Statute. TPC §70.501 et seq. (*Lien Related to Damaged Fence*), enacted in 2007 as HB 2931. Perfection of lien is governed by Transportation Code Chapter 501.

72. FLOODPLAIN

Purpose. To inform buyer about relationship of property to nearby floodplain. Floodplain disclosures may be required for subdivision plats, but are not required for restrictions or sales contracts (except residential resales). If part of the property is in or near a floodplain, consider voluntarily adding a floodplain disclosure to the sales contract and to the restrictions, even if the floodplain is shown on the plat. Be mindful that climate changes may eventually change the size, shape, and location of the floodplain, with possible consequences to the POA and the owners. Does the plat or PD ordinance contain a note or easement creating floodplain duties for the POA? Because owners and POA leaders are often unaware of the content of the PD ordinance and plat which create the project, the drafting attorney should consider using the restrictions to forge a link with the city's floodplain requirements for the development.

Context. All real property.

Applications. Sale related and POA documents.

Texas Statutes. TPC §5.008 - the required disclosure of property condition that must be given with contracts for the sales of previously occupied homes includes seller's knowledge of previous flood and whether the property is located in a 100-year floodplain. The same seller's report of property condition is required for most condominium conversions.

Notice Required? ✓**YES**, for subdivision plats and for residential resale contracts. Consider voluntary disclosure for other sales contracts, and for POA documents.

73. FORECLOSURE - REALTY

Purpose. Consumer protections against foreclosure of assessment lien by POA. Statutes require pre-foreclosure notices, provide rights of redemption following foreclosure, and specify notices that must be given. Condominium foreclosures have a shorter and narrower right of redemption.

Context. All real property.

Applications. POA documents. (*Do not write restrictions that contravene State foreclosure law.*)

Texas Statutes. TPC Chapter 51 (all foreclosures), TPC §82.113 (condominiums only - residential + nonresidential), TPC §§209.009-011 (other residential POAs).

74. FOREIGN PERSON (SELLER) - IRS REQUIREMENT

Purpose. (From govt. website) A withholding obligation under Section 1445 of Internal Revenue Code is generally imposed on the buyer or other transferee (withholding agent) when a U.S. real property interest is acquired from a foreign person. The withholding obligation also applies to foreign and domestic corporations, qualified investment entities, and the fiduciary of certain trusts and estates. This withholding serves to collect U.S. tax that may be owed by the foreign person.

Context. All real property.

Applications. Sales contract should make an affirmative statement that Seller is or is not a "foreign person" for IRS purposes.

Federal Law. 26 U.S.C.A. §1445 (*Foreign Investment in Real Property Tax Act of 1980, aka FIRPTA*)

Notice required? **NO**, but it is customary to include an affirmative disclosure in the body of the contract. IRS publishes related tax form 8288.

75. **GATED (RURAL LOCATION)**

Purpose. To ensure emergency access to gated developments.

Context. All gated developments that are not subject to city regulation of gates.

Applications. POA documents. Consider creating access easement in restrictions.

Texas Statute. Local Government Code Subchapter E (*Gated Communities and Multi-unit Housing Projects*), §352.111 et seq.

Notice Required? **NO**.

76. **GOLF CARTS**

Purpose. To allow golf carts to be used in certain locations without requiring state registration. Locations include real property near a golf course, in master planned community, or on a beach.

Applications. POA documents.

Texas Statute. Transportation Code Chapter 502 (Registration of Vehicles), §502.0071 (*Golf Carts*).

Form. If project falls within statute, consider whether restrictions will require registration of golf carts.

77. **GOLF COURSE (2007-N)**

Purpose. To empower owners of lots with golf course views when redevelopment is proposed,

Context. All real property with or adjoining a golf course or country club.

Applications. POA documents

Texas Statutes. Local Government Code §212.0155 (*Additional Requirements for Certain Replats Affecting a Subdivision Golf Course*), TPC §82.051(f) (*Creation of Condominium*), and TPC §82.0675 (*Restrictions Relating to Club Membership*).

Other. POA documents should anticipate that golf course land may be used for another purpose in future eras. Be mindful of 10-year cap on mandatory club memberships for condos.

78. **HANDICAP**

At all levels we have laws aimed at reducing or eliminating obstacles to mobility in residential communities and in public accommodations. Attorneys who work with commercial real estate are often familiar with the federal Americans with Disabilities Act, and the federal and state Architectural Barriers Acts. Those laws do not apply to the typical private residential development in which the common areas are used exclusively by the residents and their guests. Instead, the disability provisions of the Fair Housing Acts apply. The exception to the general bifurcation is a residential common area feature that qualifies as a "public accommodation" or as a "commercial facility," such as a club house that is available for use by non-residents.

Federal Laws. There are two lines of law in this topic area. For housing - private and public - the handicap provisions of the Fair Housing Acts are applicable. For "public accommodations," the Disability Acts are applicable.

Housing. Fair Housing Act, 24 C.F.R. §100.205, which is administered by the U.S. Dept. of HUD.

Public Accommodations. (1) **ADA** - Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. §12181 et seq., the regulations for which are published in 28 C.F.R. §36.101 et seq., and which is administered by the Justice Department. (2) **ABA** - The Federal Architectural Barriers Act of 1968, 42 U.S.C. §4151 et seq.

Texas Statutes. Mirroring the federal laws, Texas has parallel statutes.

Housing. TPC §301.025 (*Fair Housing Act*).

Public Accommodations. Government Code Chapter 469 (*Elimination of Architectural Barriers Act*).

Local Ordinances. Major cities have Fair Housing ordinances with handicap protections, such as Dallas City Code Chapter 20A.

Comment 1. The handicap provisions of Fair Housing Acts apply to private residential developments in which the common areas are used exclusively by residents and their guests. The ADA and Architectural Barriers statutes do not apply to common areas in deed restricted communities with private amenities, but do apply to "public accommodations." If applicable, consider adding to the POA documents an affirmation that the common area amenities are not "public accommodations."

Comment 2. If a building has at least four units, all ground floor units (and all units in an elevator building) are subject to the handicap accessibility provisions of the Fair Housing Acts.

79. **HISTORIC, ARCHEOLOGIC, OR LANDMARK FEATURES**

Purpose. To protect historical, architectural, and archeological features that are privately owned, but which are considered to have value for the larger community.

Texas Statutes. (1) TPC Chapter 208 (*Amendment and Termination of Restrictive Covenants in Historic Neighborhoods*) is bracketed in applicability to Houston and Harris County. (2) Natural Resources Code Chapter 191 (*Antiquities Code*), in particular the sections pertaining to private land - §§191.094-191.097. (3) Government Code §442.016 (*Liability for Adversely Affecting Historic Structure or Property*).

Other Authority. See "Overlay Districts" for Historic Preservation Districts which are created by city ordinance. See also "Conservation Easements"

80. **IMMUNITY**

Purpose. Immunity for volunteer officers and directors of HOAs.

Context. Residential POAs - condo + non-condo.

Applications. POA documents. Be mindful of this statutory immunity for volunteer directors when drafting POA documents.

Texas Statute. Civil Practice and Remedies Code Chapter 84 (*Charitable Immunity and Liability Act of 1987*), includes within the definition of "Charitable Organization" a Homeowner's Association as defined by §528(c) of the Internal Revenue Code of 1986.

81. **INSULATION**

Purpose. This requirement is an outcome of the energy crisis of the late 1970s, to encourage energy conservation by disclosing a new home's insulation attributes to buyers.

Context. Residential new construction.

Applications. Sale related.

Federal Law. 16 CFR §460.16 of the Federal Trade Commission Rules.

Disclosure Required? **✓YES.** Written notice must disclose type of insulation, thickness, and R-value in body of contract, or in addendum to contract.

82. **INTEREST RATE**

Context. In drafting provisions that impose interest on unpaid assessments, be mindful that the charging of interest is regulated by statute.

Texas Statute. Finance Code, Title 4 (*Regulation of Interest, Loans, and Financed Transactions*), including Chapters 301 (*General Provisions*), 302 (*Interest Rates*).

Suggestion. Unless you are a usury law expert, consider capping interest at 10% to stay within the default maximum rate. If you allow interest but do not provide a rate, 6% is the default "legal rate" of interest. Consider adding a usury savings clause to the restrictions.

83. **INTERSTATE LAND SALES FULL DISCLOSURE ACT**

Purpose. To protect the public from real property promotions that promise but do not deliver utilities, infrastructure, and completion of construction.

Context. All real property under development or without utilities.

Applications. Sale related.

Federal Law. The Interstate Land Sales Full Disclosure Act, as amended, Public Law 90-448, Title XIV, 15 U.S.C. §1701 et seq., Public Law 96-153.

Notice Required? **✓YES.** If project does not fall within HUD's exceptions, register project with HUD before taking contracts. If project qualifies for partial exception, and if roads, sewers, water, gas, or electric service or recreational amenities are not complete at time of contract, include contract disclosure that such services or amenities will be provided or completed.

Resources. The following articles are available on the State Bar's Online Library: (1) *Knowing a Little More About a "Lot" - The Interstate Land Sales Full Disclosure Act*, by William P. Sklar, July 2004; (2) *A Due Diligence Checklist for Condominium Developers*, by Lorin Combs, March 2006; (3) *Interstate Land Sales Full Disclosure Act-Issues in Condominium Developments*, by Jennifer Farnell, July 2007; (4) *Interstate Land Sales Registration*, by Jennifer Farnell, March 2008.

84. **LANDFILL**

Purpose. To give notice that the site has a history that may warrant further investigation.

Context. All real property formerly used as a municipal solid waste landfill facility.

Application. Sale related.

Texas Statute. Health & Safety Code §361.539 (*Notice to Buyers, Lessees, and Occupants*), and Administrative Code Title 30 (*Environmental Quality*), Part 1, Chapter 330 (*Municipal Solid Waste*), Subchapter T (*Use of Land over Closed Municipal Solid Waste Landfills*), §330.962 (*Notice to Real Property Records*), §330.963 (*Notice to Buyers, Lessees, and Occupants*).

Notice Required? ✓**YES**, by public recording only. Law requires the seller/owner to publicly record a notice for the benefit of buyers and occupants of the property. Statutes do not provide form of notice, but do specify information required.

85. LEAD-BASED PAINT

Purpose. To inform the public about health hazards from lead-based paint, which was widely used in housing prior to 1978. Since 1992, federal law has required a "Lead Warning Statement" as a separate attachment to every contract of sale for residential property constructed before 1978. The federal law also requires that the buyer sign a statement that buyer has (1) read the Lead Warning Statement and understands its contents, (2) received a lead hazard information pamphlet, and (3) had a 10-day opportunity to conduct a risk assessment for the presence of lead-based paint hazards.

Context. All types of residential property if constructed before 1978.

Applications. Sale related.

Federal Law. 42 U.S.C. §4852d(a)(3). Residential Lead-Based Paint Hazard Reduction Act of 1992, and Residential Lead-Based Paint Disclosure Program, Section 1018 of Title X. The U. S. Environmental Protection Agency maintains a website with consumer information.

Texas Statute. TPC §5.008, which is seller's disclosure of the condition of a used home, requires seller's disclosure of known lead-based paint and the delivery of the EPA-mandated brochure, regardless of age of property.

Notice Required? ✓**YES**. Statute applies only if built before 1978. Contract notice must be in large type, must be on a separate page from the sales contract (ie, addendum), text of notice must comply with statute, buyer certifies receiving a lead hazard information pamphlet. The EPA publishes the required brochure on its website. It is also available in many languages (including Somali and Vietnamese). TREC publishes an "Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards as Required by Federal Law."

86. LEASEHOLD

If a condominium is created on a leasehold estate, TPC Chapter 82, the Texas Uniform Condominium Act, requires leasehold disclosures in the declaration, the condominium information statement, and the condominium resale certificate. See in particular TPC §82.056 (*Leasehold Condominiums*).

87. LIEN DISCLOSURE (2007-N)

Texas Statute. TPC §5.016 (*Conveyance of Residential Property Encumbered by Lien*), enacted in 2007 by H.B. 2207, requires a specific disclosure from seller to buyer if property is to be conveyed subject to lien. There are 11 exemptions from the notice requirement, including "(10) where the purchaser obtains a title insurance policy insuring the transfer of title to the real property." Also, a violation of the new law "is not actionable if the person required to give notice reasonably believes and takes any necessary action to ensure that each lien for which notice was not provided will be released on or before the 30th day after the date on which title to the property is transferred." **NOTE** that the 2007 legislature enacted two laws numbered TPC §5.016. Expect re-numbering in future sessions.

Disclosure Required? ✓**YES**, in the restrictions to establish lien priority, and with the sales contract if TPC §5.016 applies.

88. LIEN PRIORITY

Context. There are a number of laws dealing with lien priority - some general to all real property, some specific to condominiums or planned developments. Condominiums, for example, have a statutory lien for POA assessments, and a statutory priority of lien. Non-condo POAs do not have that statutory basis. Restrictions should be written to establish the priority of the POA's assessment lien in light of the many laws.

Issue. Most POA documents were drafted before Texas embraced home equity lending. In drafting new restrictions for lien priority, consider how home equity liens should be treated.

Applications. POA documents.

Texas Statutes. TPC §51.002 (foreclosure), §82.113 (condos only), §§209.009-011 (non-condo POAs); Also Tax Code §32.05 Tax Code (tax lien priority), §34.21(g)(2)(iv) + (k).

89. LITIGATION, LIS PENDENS, JUDGMENTS

Purpose. To inform buyers that the POA is subject to a monetary judgment to which the buyer may be required to contribute, or that the POA is involved in litigation which may have consequences for all its members.

Context. All residential developments with mandatory POAs, and all condominiums (residential + non residential).

Applications. Resale certificates and condominium information statements.

Texas Statutes.

Initial Condo Sales Disclosures. TPC §82.153 (a), which stipulates the contents of the Condominium Information Statement used in the declarant's sale of condominium units, requires (9) a description of any unsatisfied judgments against 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 a declarant has actual knowledge.

Resale Disclosures - Condo + HOAs. Similar disclosures are required for resales. For condominiums, TPC §82.157(a) requires that the condominium resale certificate disclose (6) any unsatisfied judgments against the association; and (7) the nature of any pending suits against the association. For homes in other types of mandatory POAs, TPC §207.003(b) requires that the resale certificate disclose (8) the total of any unsatisfied judgments against the property owners' association; (9) the style and cause number of any pending lawsuit in which the property owners' association is a defendant.

90. MANAGEMENT CERTIFICATE

Purpose. To enable the public (particularly title companies and brokers) to obtain contact information for every POA in Texas. This uniquely Texas law was first enacted for condominiums in 1993, as TPC §82.116. In 2001, a similar requirement (TPC §209.004) was imposed on residential planned developments. Neither statute addresses when in the life of a project the first certificate is recorded. Best to record before resale activity begins in the development.

Context. All residential developments with mandatory POAs, and all condominiums (residential and commercial).

Applications. Certificates are publicly recorded. For condos, the management certificate must be executed by HOA officer. For non-condos, the management certificate must be executed by HOA officer or HOA manager. Must be updated when information changes.

Texas Statute. TPC §82.116 (*Management Certificate*) - condos only-residential and non-residential, and TPC §209.004 (*Management Certificates*) - residential subdivisions only.

Notice Required? ✓**YES**. Statutes specify the requirements of the certificate.

91. MANUFACTURED HOUSING

Not covered by this article, except to note the existence of the Texas Manufactured Housing Standards Act, Texas Occupations Code Chapter 1201, which defines "manufactured home" and "mobile homes," also (per 2007 amendments) "new" and "used" manufactured homes.

92. MEETINGS

Texas Statutes.

- Condominiums (Residential + Non-Residential). TPC Chapter 82 (*TUCA*), §82.108 (*Meetings*). Board meetings and association meetings must be open to members. However, the board may go into closed executive session for certain limited purposes.
- Certain Planned Communities (Bracketed to Woodlands and Clear Lake City, in the Houston area). Government Code, Title 5 (*Open Government; Ethics*), §551.0015 (*Certain Property Owners' Associations Subject to Law*) and §552.0036 (*Certain Property Owners' Associations Subject to Law*). This limited category of POAs is subject to government open meeting laws and open records laws. But for these sections and their limited applicability, POAs are not subject to governmental standards for open meetings and open records. This law was written for The Woodlands in 1999, and expanded to Clear Lake City in 2007.
- Nonprofit Corporations. Business Organizations Code, Chapter 6 (Meetings and Voting for Domestic Entities), and Chapter 22 (Nonprofit Corporations), various sections.

93. METERING (UTILITIES)

Electricity. Texas Public Utilities Code requires individual metering or submetering of electricity in multi-family housing. Enforced by Public Utility Commission. (See Utility Metering - Electric, below.)

Gas. Submetering is permitted, not required. Rules enforced by Railroad Commission of Texas. (See Utility Metering - Gas, below.)

Water & Wastewater. Water Code requires individual metering or submetering of water in multi-family housing. Enforced by Texas Commission on Environmental Quality. (See Utility Metering - Water, below.)

94. MINERAL INTERESTS & DRILL SITES (2007-N)

Texas Statute. Natural Resources Code §91.703. Enacted in 2007 as H.B. 630, §91.703 requires an oil or gas operator to give written notice to surface estate owner within 15 days after receiving a permit to drill a well or unplug and plugged well. Form of notice is not provided. (*2007 H.B. 630*.)

Notice Required? **NO**. Outstanding mineral interests will appear in title information on individual lots, and no statute requires a disclosure in the contract or restrictions. Consider adding a general notice to the restrictions that superior mineral interests exist. For condominiums, specific mineral interest information may also be included with the easements and licenses required by *TUCA* in TPC §82.055(10).

Comment. Anticipating that buyers will complain about odors, dirt, traffic, and noise after occupying the property - and during different stages in an exploration or drilling operation - consider a voluntary disclosure about surface

use rights and the drill sites on or adjacent to the property, particularly if the drill sites are not readily apparent on a visit to the sales center.

95. **MOLD**

Context. All real property - residential & nonresidential - in which mold has been remediated.

Application. Sale related.

Texas Statute. Occupations Code §1958.154(b), Certif. of Mold Remediation; Duty of Property Owner.

Notice Required? **✓YES.** If mold has been remediated within past 5 years, seller must give buyer a copy of each certificate issued for the property during the preceding 5 years. No other Texas or federal law requires disclosures about mold in sales contracts or restrictions.

96. **NUISANCE**

Context. In drafting broad nuisance provisions for POA documents, be mindful that "public nuisance" and "common nuisance" are statutorily defined terms, which should be avoided unless you intend to be governed by that statute.

Texas Statute. Civil Practice and Remedies Code, Chapter 125 (*Common and Public Nuisances*).

97. **OCCUPANCY**

The number of occupants per home may be limited by the restrictions, with a few exceptions. City ordinances may limit the number of occupants per dwelling based on square footage. A city's limits are typically too high to be useful in the POA context. More pertinent are the Fair Housing Acts, which consider occupancy quotas to be avenues for discriminating against the protected "familial status" category. According to the HUD Memorandum dated March 20, 1991, ". . . the Department believes that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act." The HUD Memorandum is detailed and informational, and should be consulted by the drafter of occupancy limits. HUD's policy applies only to the protected class of "familial status."

98. **OVERLAY DISTRICT** (*Municipal zoning*)

Purpose. A city may create special zoning districts that "overlay" the city's general zoning scheme. These overlay districts may regulate the appearance, uses, size, and location of improvements within the district. The existence of such a district may or may not be publicly recorded, and there may be no requirement for sellers to notify buyers that the property is within an overlay district.

Examples (taken from City of Dallas, 2007):

Conservation District preserves an area's distinctive atmosphere or character by protecting or enhancing its significant architectural or cultural attributes. Dallas Code Sec. 51A-4.505.

Historical Preservation District preserves places and areas of historical, cultural, or architectural importance and significance. Dallas Code Sec. 51A-4.501.

Neighborhood Stabilization Overlay District preserves single family neighborhoods by imposing neighborhood-specific yard, lot, and space regulations that reflect the existing character of the neighborhood. Dallas Code Sec. 51A-4.507

Context. All real property located in an overlay district.

Application. Because the existence of an overlay district may affect the future uses and value of the property, developers and sellers should consider voluntary disclosure in the sales contract, and possibly in the restrictions.

Authority. City Ordinance.

99. PIPELINE (SUB-SURFACE PIPELINES)

Purpose. To inform buyers of underground pipeline that transports gas or hazardous substances.

Context. Unimproved land to be used for residential purposes, including lot sales to builders.

Applications. Sale related.

Texas Statute. TPC §5.013 (*Seller's Disclosure of Location of Conditions Under Surface of Unimproved Real Property*)

Disclosure Required? ✓YES, with a significant exception. Notice is not required if contract requires seller to give buyer a title commitment prior to closing, and buyer has right to terminate if title objections are not cured prior to closing. Statute does not provide form of notice, but does specify information required.

100. POA NOTICE

Purpose. To inform buyers of the mandatory aspect of the POA and its lien rights.

Context. Residential planned developments, not condominiums.

Applications. Sale related.

Texas Statute. TPC §5.012 (*Notice of Obligations Related to Membership in Property Owners' Association*).

Notice Required? ✓YES. Statute mandates the form and text of notice.

Issue of 2-Tier POAs. Statute does not anticipate two-tier POAs - a planned development or condominium within a master planned community. Advisable to give a notice for each POA. For a condominium in a master planned community, give this notice for the master POA only.

101. RADON GAS

Purpose. To inform buyer about radon gas, which is considered a health hazard with links to cancer. The U.S. Environmental Protection Agency maintains an informational website about radon, recommending that all homes be tested for radon gas. The EPA website also has a USA map with locations of radon gas concentrations. Federal law does not mandate a disclosure about radon gas in connection with the sale of new homes or used homes. Texas law has no radon gas disclosure requirement for new homes.

Texas Statute. TPC §5.008 (*Seller's Disclosure of Property Condition*).

Disclosure Required? ✓YES, with the sales contract in a residential resale. The same seller's report of property condition is required for most condominium conversions.

102. REAL ESTATE LICENSE - SELLER

Purpose: To protect buyers who are unaware the seller is a real estate licensee with expertise, or that the real estate agent has an ownership interest in the brokered property.

Context: All real property.

Application: Sale related.

Texas Statutes: Administrative Code Title 22 (*Examining Boards*), Part 23 (*Texas Real Estate Commission*), Chapter 535 (*General Provisions*), Subchapter N (*Suspension and Revocation of Licensure*), Rule §535.144 (*When Acquiring or Disposing of Own Property or Property of Spouse, Parent or Child*).

Disclosure Required? **✓YES**, if the seller is a licensee or related to a licensee. Statute requires disclosure, but does not specify text or form.

103. REAL ESTATE LICENSE - SALES STAFF

Purpose: With few exceptions, all persons who broker real estate must be licensed by the State. A sales person who works directly for the owner/seller is not required to be licensed. Occupations Code §1101.005 exempts "a person employed by an owner in the sale of structures and land on which structures are located if the structures are erected by the owner in the course of the owner's business."

Context: All real property.

Application: Sale related.

Texas Statutes: (1) Occupations Code, Chapter 1101 (*The Real Estate License Act*), §1101.005 (*Applicability of Chapter*), and (2) Administrative Code Title 22 (*Examining Boards*), Part 23 (*Texas Real Estate Commission*), Chapter 535 (*General Provisions*), Subchapter C (*Exemptions to Requirements of Licensure*), Rule §535.34 (*Salespersons Employed by an Owner of Land and Structures Erected by the Owner*).

Disclosure Required? **NO**, disclosure is not required. However, licensure is required for any sales person who does not meet the narrow exemption from the licensing law.

104. REPLATING

Subsection (a) of TPC §205.003 (*Restrictions Applicable to Revised Subdivisions*) seems to state the obvious. If part of a deed-restricted subdivision is replatted as a new subdivision, the new subdivision is bound by the previously recorded restrictions. Subsection (b), however, seems like a good example of bad legislative drafting. It requires the owners of the new replatted subdivision to comply with Chapter 204's petition procedures to modify the restrictions. Questions:

- How does Chapter 204 - which is bracketed to the Houston area - apply to property that is subject to Chapter 205 (Statewide, but bracketed to counties of 65K or more) but outside the domain of Chapter 204?
- What happens if the restrictions provide an effective amendment process that negate the need for a petition process?

105. RESALE CERTIFICATE

Purpose. To inform and protect purchasers of resale homes in established developments, the HOA provides information about the documents, budget, insurance, among other things.

Context. Similar disclosure requirements for condominiums (all) and subdivisions (residential only).

Applications. Sale related.

Texas Statutes. TPC §82.157(a) (*Resale of Unit*), and §207.003 (*Delivery of Subdivision Information to Owner*).

Form Required? **✓YES**, for resales only. Statutes specify contents of each. TREC publishes 2 forms - one for each. See TREC 32-1 (*Condominium Resale Certificate*) and TREC 37-2 (*Subdivision Information, Including Resale Certificate for Property Subject to Mandatory Membership in an Owners' Association*)

106. REALES - RESIDENTIAL PROPERTY CONDITION (2007-C)

Context. TPC §5.008 requires the seller of previously occupied residential property to make certain disclosures to the purchaser in connection with the sales contract. Thus, it applies to an apartment complex that is converted to condominium ownership. Because TPC §5.008 was written for use with the resale of a traditional fee-simple

detached single family house, it can be challenging to apply the statutory disclosure requirements to a multi-unit condominium conversion with common elements. Also, because of TUCA also requires property condition disclosures for condominium conversions, it is tempting to think that TPC §5.008 may not apply to the developer's marketing of a newly renovated and converted condominium development.

Applications. Sale related.

Federal Law. See Lead-Based Paint above.

Texas Statute. TPC §5.008, which was amended in 2007 by 3 House Bills, each adding something to the disclosure.

H.B. 271 - Adds disclosure about manufacture of methamphetamine. (Effective 1/1/08)

H.B. 2118 - Adds disclosure about smoke detectors. (Effective 9/1/07)

H.B. 2819 - Adds disclosure about coastal locations. (Effective 9/1/07)

Notice Required? **✓YES**, the TPC §5.008 notice must be given with the sales contract for every type of used (previously occupied) residence. TPC §5.008 specifies the content of the notice. However, until the subparts of the required notice are re-numbered by statute, publications of the Property Code may show three versions of §5.008(a) - each with a different addition. TREC publishes "Seller's Disclosure of Property Condition" with all 3 changes.

Other Texas Statutes. See also: (1) Condominium Conversions, (2) Mold, (3) Resales Certificates.

107. **RESCISSION - 3 DAYS TO CANCEL** (RARELY APPLIES)

Purpose. Protects consumers from door-to-door sales of real property.

Context. The purchase of real property for more than \$100, payable in installments or in cash.

Applications. Sale related.

Exemptions. (1) the purchaser is represented by a licensed attorney, (2) the transaction is negotiated by a licensed real estate broker, or (3) the transaction is negotiated at a place other than the consumer's residence by the person who owns the property.

Texas Statute. Business & Commerce Code, Chapters 39 and 601 (*Cancellation of Certain Consumer Transactions*). On April 1, 2009, Chapter 601 will replace Chapter 39, per H.B. 2278 enacted in 2007, as a nonsubstantive recodification.

Notice Required? **✓YES**, but only in the unusual circumstances to which this statute applies. (*Notices are not provided in Appendix B of this article to avoid accidental use.*)

108. **RESIDENTIAL SERVICES CONTRACT**

Purpose. To protect buyers from being pressured into a "services contract" on the home.

Context. Residential property.

Applications. Sale related.

Texas Statute. Occupations Code, Chapter 1303 (*Residential Service Companies*), §1303.302 (*Certain Conditional Sales of Property Prohibited*).

Notice Required? **✓YES**. Substance of contract notice provided by statute.

109. **RESIDENTIAL USE** (See Community Homes)

110. **RIGHT OF FIRST REFUSAL**

Purpose. Rights of first refusal on leases and sales were not uncommon in POA restrictions written in Texas in the 1970s. Now they are generally disfavored, although legal.

Applications. Sale related and POA documents.

Texas Statutes. TPC §5.015, §82.157(a)(1), §207.003(b)(1)

- §5.015 prohibits fee for a declination of a ROFR in a condominium sale.
- §82.055(9) requires restraints on alienation of units to be in declaration.
- §82.157(a)(1) requires disclosure of ROFR in condominium resale certificates.
- §207.003(b)(1) requires disclosure of ROFR in subdivision resale certificates.

Disclosure Required? **✓YES.** To be effective, right of first refusal must be in restrictions. A ROFR must be disclosed in resale certificates.

111. **ROADS**

Purpose. POAs would like governmental powers to regulate subdivision streets and are sometimes stymied about their options for regulating private and public streets.

Applications. POA documents. Write restrictions that anticipate a public-private partnership for regulating streets in, through, and around subdivisions.

Texas Statutes.

- Occupations Code Chapter 2308 (*Vehicle Towing*), formerly Transportation Code Chapter 684, authorizes towing of vehicles from private property under certain circumstances. Recodified in 2007 by H.B. 2094.
- Transportation Code §542.005 (*Rules on Private Property*) affirms rights of owner over private road.
- Transportation Code §542.006 (*Speed Restrictions on Private Roads*) authorizes a process of extended public speed restrictions to private roads - bracketed to subdivisions with at least 400 residents in unincorporated county.
- Transportation Code §542.007 (*Traffic Regulations: Private Subdivisions in Certain Counties*) authorizes a process of converting private roads into quasi-public roads - bracketed for counties with a population of 500 or less.
- Transportation Code §542.008 (*Traffic Regulations: Private Subdivisions in Certain Municipalities*) authorizes a process of converting private roads into quasi-public roads - bracketed for cities with a population of 300 or more.
- Transportation Code §545.307 (*Overnight Parking of Commercial Motor Vehicles in or near Residential Subdivision*) prohibits commercial vehicles between 10 p.m. and 6 a.m. in deed restricted residential subdivisions under certain circumstances. Bracketed to counties with 220,000+ population. Amended 2007 to add "near" as well as "in" subdivisions.

Notice Required? **NO.**

112. **ROADS - FUTURE TRANSPORTATION CORRIDOR (2007-N)**

Purpose. If land is in a future transportation corridor, a plat of the land may not be approved if a specified disclosure is not on the plat. Also, sales or leases of the platted parcels must contain a specifically worded conspicuous statement.

Context. All land near future transportation corridors.

Applications. Sale related.

Texas Statute. Local Government Code §232.0033 (*Future Transportation Corridors*).

Notice Required? ✓YES.

113. ROOF MATERIALS

Purpose. To prohibit the required use of wood shingles on roofs.

Context. Residential only, all types

Applications. POA documents - a requirement of wood shingled roofs is void.

Texas Statute. TPC §5.025 (*Wood Shingle Roof*).

114. SATELLITE DISHES (*see Television*)

115. SEX OFFENDERS

Purpose. Periodically there is public interest in prohibiting registered sex offenders from residing in family-friendly neighborhoods. Some cities are working on ordinances. Developers may feel pressured to jump on that bandwagon to attract homebuyers with young families. Although the idea of screening-out sex offenders at point of sale and with recorded restrictions is emotionally appealing, it may create a large liability for the developer/seller and for the POA if a neighborhood child is victimized.

Context. Residential only, all types.

Applications. Sale related and POA documents.

Texas Statutes. Code of Criminal Procedure, Chapter 62 (*Sex Offender Registration Program*) mandates a public registry.

Disclosure Required? NO.

116. SIGNS - POLITICAL

Purpose. To override POA documents or POA policies that prohibit or limit political signs.

Context. All real property with mandatory property owners associations.

Applications. POA documents.

Texas Statute. TPC §202.009 (*Regulation of Display of Political Signs*).

Notice Required? NO, but be mindful of the statute when drafting sign restrictions.

117. SMOKE DETECTORS (2007-N)

Purpose. Requires installation of smoke detectors in new houses and duplexes.

Context. Residential real property.

Applications. Sale related.

Texas Statute. Health & Safety Code, Chapter 766 (*Fire Safety in Residential Dwellings*), and TPC §5.008 (*Seller's Disclosure of Property Condition*).

Notice Required? ✓YES, for residential resales. The enacting legislation for Health & Safety Code Chapter 766 - House Bill 2188 (80th Session) - also amends the contract disclosure for home resales (TPC §5.008) to require specified text. No notice is required by H&S Code Chapter 766.

Issue. Health & Safety Code Chapter 766 applies to the construction and sale of new houses and duplexes, and the remodeling and resale of used houses and duplexes. It does not appear to apply to multi-family housing. However, the bill that enacts H&S Code Chapter 766 also amends TPC §5.008, which does apply to multi-family as well as single family and duplexes. Does the combination of the 2 law changes imply a notice requirement for new home sales as well as resales?

118. STORAGE TANKS - UNDERGROUND (UST) & ABOVEGROUND (AST)

Context. When selling new or used storage tanks, whether aboveground or underground, or real property containing such storage tanks, seller must give buyer a general notice that such tanks are regulated by the Texas Commission on Environmental Quality, and also specific information about the tanks.

Application. Sale related.

Texas Statute. Administrative Code, Title 30, Part 1, Chapter 334 (*Underground and Aboveground Storage Tanks*).

Notice Required? ✓YES. TAC Chapter 334, Subchapter A (*General Provisions*), §334.9 (*Seller's Disclosure*).

119. SWIMMING POOL

Not covered by this article, except to note the existence of the state laws and local ordinances that regulate swimming pools on private property. Among the state laws are (1) Texas Health & Safety Code Chapter 757 (*Pool Yard Enclosures*), and (2) Texas Administrative Code, Subchapter L, Chapter 265 (*Specific Safety Features for Pools & Spas*). For example, Health & Safety Code §757.014 states ". . . a property owners association is not required to enclose a body of water or construct barriers between the . . . property owners association's property and a body of water such as an ocean, bay, lake, pond, bayou, river, creek, stream, spring, reservoir, stock tank, culvert, drainage ditch, detention pond, or other flood or drainage facility." (*There's a law for everything!*)

120. TAXES - FRANCHISE

Purpose. To obtain an exemption from the State's annual franchise tax on incorporated entities.

Context. All residential real property with incorporated owners associations.

Applications. POA documents.

Texas Statute. Tax Code §171.082 (*Exemption - Certain Homeowners' Associations*).

Notice Required? NO, but an affirmative statement in a POA governing document that "the project is legally restricted for use as residences" may help the POA obtain the franchise tax exemption when it meets the other qualifications.

121. TAXES - PROPERTY

Texas Statutes. Tax Code, various sections.

- §23.18 (*Property Owned by a Nonprofit Homeowners' Organization for the Benefit of its Members*)
- §25.09 (*LOCAL APPRAISAL OF . . . Condominiums and Planned Unit Developments*)
- §32.05 (*Priority of Tax Liens over Other Property Interests*)
- §34.21.g(2)(A)(4) (*Right of Redemption*)

Notice Required? NO.

122. TAXES - ROLL BACK

Purpose. If the land had a special use-based valuation when owned by seller, and buyer changes the use of the land, the change of use may trigger a re-assessment that results in additional taxes some of which may relate back to the pre-closing period when seller owned the land.

Context. Vacant land.

Applications. Sale related.

Texas Statute. TPC §5.010(a) (*Notice Regarding Possible Liability for Additional Taxes*).

Notice Required? ✓YES, if none of the exceptions apply. TPC §5.010(a) prescribes form of notice.

Exceptions. There are a number of exceptions to the duty, including "(d) The notice described by Subsection (a) is not required to be given if in a separate paragraph of the contract the contract expressly provides for the payment of any additional ad valorem taxes and interest that become due as a penalty because of: (1) the transfer of the land; or (2) a subsequent change in the use of the land."

123. TELEVISION - EQUIPMENT (ANTENNA, CABLE, SATELLITE DISHES)

Purpose. To void restrictions that prevent residents from having television antenna masts and "mini" satellite dishes.

Context. All real estate is affected by the Telecom Act. The OTARD rules are directed at residential real estate - all types.

Applications. POA documents.

Federal Law. 47 U.S.C.A. §609 (*Telecommunications Act of 1996*), for which the Federal Communications Commission maintains a website containing the act and supplemental materials, such as implementation rules and orders. In the residential real estate context, the FCC rules of most significance pertain to television antennas, satellite dishes, and cable service, the *Rules for Over the Air Reception Devices* (known as "**OTARD**"), located at 47 CFR §1.4000 et seq. The FCC's Fact Sheet about OTARD is available online at its website.

Telecommunications equipment covered by OTARD are DBS antennas one meter or less in diameter, multipoint distribution service (MDS) antennas one meter or less in diameter, and television broadcast antennas regardless of size. Antennas may be installed on individually-owned property in subdivisions and "exclusive use" areas (usually, the limited common elements) in condominiums. The wording of a project document may determine whether and where the antennas are allowed

POA antenna prohibitions based on safety are permitted. These restrictions must have clearly defined safety objectives in the text of the restriction or in another document referenced by the restriction. If there is another way to accomplish the objective, the POA must use the alternative method.

POA regulations that are permitted include restrictions that do not: (1) prevent or unreasonably delay installation, maintenance, or use of antennas (total bans on antennas and drawn-out application and permit processes); (2) unreasonably increase the cost of installation, maintenance, or use of antennas (requiring expensive fencing and landscaping to screen antenna); or (3) preclude an acceptable quality signal (e.g. a requirement to place an antenna in the backyard, which faces the wrong direction to obtain reception). Restrictions that require compliance with building and safety codes, and manufacturer's instructions on installation of antennas are permitted. POAs may apply to the FCC for a waiver under specific or unusual circumstances.

The FCC rule preempts state and local laws that conflict with the rule. However, state and local laws governing antennas will still be enforceable if they do not conflict with FCC regulations.

124. TELEVISION - SERVICE CONTRACTS (2007-N)

Purpose. To give residents freedom to contract for cable to television service by voiding the exclusivity provisions in contracts between cable operators and property operators, such as homeowners associations.

Applications. POA documents and Declarant contracts.

Federal Law. Telecommunications Act of 1996, Pub. L.A. No. 104-104, 110 Stat. 56 (1996), for which the Federal Communications Commission maintains a website containing the act and supplemental materials, such as implementation rules and orders.

Report. On October 31, 2007, the Federal Communications Commission ordered an end to exclusive contracts for television service to multiple dwelling units (MDUs). The essence of the order is in its Paragraph 31 -

"Specifically, 30 days after publication of this Report and Order in the Federal Register, no cable operator or multichannel video programming distributor subject to Section 628 of the Act shall enforce or execute any provision in a contract that grants it the exclusive right to provide any video programming service (alone or in combination with other services) to a MDU. Any such exclusivity clause shall be null and void."

At the beginning of the 55-page order, the FCC defines MDU, in part, to "include apartment, cooperative, and condominium buildings. For purposes of this Report and Order, we adopt this definition but expand it to include other centrally managed real estate developments. Thus, the term MDUs, for purposes of this Report and Order, also includes gated communities, mobile home parks, garden apartments, and other centrally managed residential real estate developments."

125. **TITLE ABSTRACT OR INSURANCE**

Purpose. Licensed real estate agents are not entitled to receive a commission on a sale if the agent has not advised the buyer in writing that the buyer should have the abstract covering the real estate that is the subject of the contract examined by an attorney chosen by the buyer, or be provided with or obtain a title insurance policy. The "writing" is customarily in the body of the contract.

Context. All real estate.

Applications. Sale related.

Texas Statute. Occupations Code, Chapter 1101 (*Real Estate License Act*), §1101.555 (*Notice to Buyer Regarding Abstract or Title Policy*) + §1101.806 (*Liability for Payment of Compensation or Commission*).

Notice Required? ✓**YES**, for the benefit of licensed real estate agents.

126. **TRANSFER FEES FOR HOA**

Purpose. The term "transfer fee" has many uses in the POA vernacular and in the statutes. The term broadly applies to a variety of monetary charge that may arise in connection with a change of title, such as contributions to a special fund of the POA, or charges for preparing the POA's resale certificate, or fees for administering the change of title on the POA's records.

Context. All real property with POAs.

Applications. Sale related and POA documents.

Notice Required? ✓**YES**, but not by statute. An owner's monetary obligations - including any liability for transfer fees - should be established by the restrictions. The sales contract should specify whether buyer or seller pays the transfer fees. The only transfer fee with statutory authority is the charge for preparing a resale certificate.

127. **TRANSFER FEES TO DECLARANT (2007-N)**

Purpose. Prohibits restrictions requiring payments for declarant's benefit on all future transfers.

Context. All residential real property.

Applications. Sale related and POA documents.

Texas Statute. TPC §5.017 (*Fee for Future Conveyance of Residential Real Property and Related Lien Prohibited*), enacted in 2007 as H.B. 2207.

128. **UNDERGROUND STORAGE TANKS** (See Storage Tanks - Underground & Above Ground)

129. **UNINCORPORATED POAS**

Unincorporated POAs are subject to Texas Business Organizations Code Chapter 252 (Unincorporated Nonprofit Associations) if they are nonprofit entities.

130. **UTILITY METERING - ELECTRIC**

Context. Texas Utilities Code §184.012 prohibits a city from issuing a building permit or certificate of occupancy unless the residential units in multi-family buildings are submetered or individually metered for electricity. The statute expressly applies to condominium conversions. In 1999, the statute was amended by the addition of §184.0125, which adds a senior housing exemption. Sec. 25.142 Public Utility Commission Rules for Submetering for Apartments, Condominiums, and Mobile Home Parks imposes limits on penalties, administrative charges, and discontinuance of service. These are enforced by the Public Utility Commission.

Applications. Sale related.

Texas Statutes. Administrative Code, Title 16, Chapter 25, Rule §25.142 (*Submetering for Apartments, Condominiums, and Mobile Home Parks*), and Utilities Code Chapter 184 (*Electric and Water Metering*), particularly:

- Subchapter B (*Metering in Apartments, Condominiums, and Mobile Home Parks*)
- §184.012 (*New Construction or Conversion*)
- §184.0125 (*Housing for Older Persons*)
- §184.013 (*Submetering*)

Notice Required? **✓YES**, if electricity to units is submetered. As required by §25.142(c) of the Administrative Code, at time of contract, buyer must be given a copy of Administrative Code §25.142 or an executive summary. Executive summaries are available on the Public Utility Commission website, and from the Texas Apartment Association (TAA members only).

131. **UTILITY METERING - GAS**

Purpose. Submetering is permitted, not required. Rules enforced by Railroad Commission of Texas.

Context. Dwellings with sub-metered gas service, typically multi-family buildings

Applications. Sale related.

Texas Statute. Administrative Code Title 16, Part 1, Chapter 7, Subchapter D, Rule §7.450.

Notice Required? **NO**.

132. **UTILITY METERING - WATER**

Context. This information applies only when water service to units is not individually metered by the water provider. Multi-family construction started after January 1, 2003, must be individually metered or sub-metered for water, per §13.502 Water Code, unless the public water provider decides such metering is not feasible (in which case the property will be "master metered"). Because water sub-metering technology and servicers are uneven, condominiums created with submetered water have been known to abandon use of the equipment. Consider using the condominium declaration to anticipate alternate ways of allocating water expenses if submetering ceases to be used. Water laws are enforced by the Texas Commission on Environmental Quality.

Applications. Sale related.

Texas Statute. Water Code, Chapter 13, Subchapter M, Sections 13.501 et seq. (*Submetering and Nonsubmetering for Apartments and Manufactured Home Rental Communities and Other Multiple Use Facilities*) which requires TCEQ to adopt rules. See Administrative Code, Title 30 (*Environmental Quality*), Chapter 291 (*Utility Regulations*), Subchapter H (*Utility Submetering and Allocation*), which is available on the TCEQ website.

Notice Required? ✓**YES**, if water to units is submetered. At time of contract, buyer must be given a copy of Administrative Code §§292.121 et seq, or an executive summary. Executive summaries are available on the TCEQ website, and from the Texas Apartment Association (TAA members only).

133. **UTILITY SERVICE AREA** - See Water & Sewer Lines

134. **WARRANTY - RCLA (2007-C)**

Purpose. To inform new home buyers of their rights to process construction defect claims against the contractor.

Context. The Residential Construction Liability Act (RCLA) has been a Texas law since 1989 and has been frequently amended. It was amended in 2000 to require a specifically-worded conspicuous notice in the purchase contract for a newly constructed or newly remodeled home. The text of the notice was revised slightly in 2003, and again in 2007. Also, the 2007 amendment removed the requirement that the notice be positioned next to the buyer's signature.

Application. Sale related for all home sales (including condominiums) that are not subject to TRCCA, if newly constructed or newly remodeled.

Texas Statutes. TPC §5.016 (*Disclosure of Absence of Certain Warranties*), enacted in 2007 as H.B. 1038, and TPC Chapter 27 (*Residential Construction Liability*), specifically §27.007 (*Disclosure Statement Required*), amended in 2007 by H.B.3147 + H.B. 1038, and §27.0042 (*Conditional Sale to Builder*).

Notices Required? ✓**YES**, TWO notices are required in the sales contract, for homes not subject to TRCCA (TPC Title 16). One notice is required by TPC §5.016, the other by TPC §27.007. Another notice is optional - see TPC §27.0042, which authorizes a contract provision that gives builder the option of buying back the home if costly construction defects are found within first 5 years.

135. **WARRANTY - TRCCA CHAPTER 420 (2007-N)**

Purpose. To replace implied warranties with statutory warranties for home construction, and to provide standards and a process for resolving residential construction disputes.

Context. The TRCCA was enacted in 2003, and has been amended each session since.

Application. Sale related for all home sales that are subject to TRCCA, if newly constructed or newly remodeled.

Texas Statutes. TPC Title 16, *Texas Residential Construction Commission Act*, Chapter 420 (*Building Contract Provisions*). Chapter 420 was enacted in 2007 as H.B. 1038.

Notice Required? ✓**YES**. Contract must state:

- (1) Builder's name, per TPC §420.002.
- (2) Builder's certificate of registration number, per TPC §420.002.
- (3) The notice required by TPC §420.001.
- (4) To be enforceable, a binding arbitration provision must be conspicuous per TPC §420.003.

Also. The new TREC "Addendum Containing Required Notices Under §5.016, §420.001 and §420.002, Texas Property Code," is confusing. It references 3 statutes and provides 3 notices, but does not make clear that either "A" applies or "B" and "C" apply, but no other combinations. Also, there are 2 new-in-2007 disclosure laws - both numbered §5.016.

136. WATER & SEWER LINES - CERTIFIED SERVICE AREA

Context. If unimproved real property is located in the "certificated service area" of a retail public utility other than a water district, at time of contract seller must give buyer a specific written notice.

Federal Statute. The circumstances that trigger the Texas statute may also signal applicability of the Interstate Land Sales Full Disclosure Act (see above).

Texas Statute. Water Code Chapter 13 (*Water Rates & Services*), specifically §13.257 (*Notice to Purchasers*)

Notice Required? **✓YES**, but only for sale of unimproved land that does not fall into one of the 11 exclusions from the notice requirement, such as land located within the corporate limits of a municipality, and land that receives water or sewer service from a utility service provider on the date the property is transferred.

137. WETLANDS

Federal Statutes. There are at least 7 federal acts pertaining to wetlands. See list in Texas Water Code §11.502(1).

Texas Statutes. Water Code §11.501 et. seq. (*Wetlands Act*), and Natural Resources Code, Chapter 221 (*Wetland Migration*).

Notice Required? **NO**, but in land sales it is customary to give buyer the right to obtain information about a property's wetlands status. For use with residential contracts, TREC publishes the "Environmental Assessment, Threatened or Endangered Species, and Wetlands Addendum" which authorizes buyer to perform inspections for determination of wetland status.

138. WILDLIFE - DEER

Texas Parks & Wildlife Code §43.0612 authorizes a property owners association to apply to the Parks & Wildlife Department for a permit to trap and transport surplus white-tailed deer found within the geographic area in which property subject to the property owners association is located. (*A reminder that POAs are everywhere!*)

139. WILDLIFE - ENDANGERED OR THREATENED SPECIES

Purpose. To alert buyer to the possible existence of threatened or endangered species of animals and plants, as defined by federal and state law.

Context. All real property containing endangered or threatened species or habitat.

Applications. Sale related.

Federal Law. The Endangered Species Act of 1973, 16 U.S.C. §§1531-1544, is administered by the U.S. Fish & Wildlife Service. The list of species protected by the federal law is available on the Fish & Wildlife Service website.

Texas Statutes. Parks & Wildlife Code Chapters 68 & 88, and Administrative Code, Title 31, §65.171 et seq, are administered by the Parks & Wildlife Department. The Texas list of endangered species is available on the Parks & Wildlife website.

Notice Required? **NO**. The seller who knows that the property contains one or more plants or animals that are endangered or threatened may consider a voluntary disclosure as part of the contract. In land transactions, it is customary to give buyer the right to obtain information about threatened and endangered species. For use with residential contracts, TREC publishes the "Environmental Assessment, Threatened or Endangered Species, and Wetlands Addendum" which authorizes buyer to perform inspections for determination of protected species.

APPENDIX B
NOTICES - ARRANGED BY ALPHABETIC CODES
2007-C (Changed in 2007) ■ 2007-N (New in 2007)

CAUTION. THIS APPENDIX CONTAINS NAKED NOTICES.

The statutory excerpts listed below are taken out of context and must not be used "as is." Treat this Appendix as "inquiry notice." In each case, consult the statutory source for (1) who prepares the notice or disclosure, (2) who has the duty to deliver it, (3) when it must be given, (4) how it must be given, (5) to whom it must be given, (6) under what circumstances is it not required, (7) whether it must be signed and by whom, (8) under what circumstances must it be revised, (9) whether it must be recorded, (10) whether other documentation must accompany it, and (11) what penalties for failure to provide. Notices of special districts are typically issued by the district. Some notices - like resale certificates - are typically prepared on TREC forms.

B-1. ADMINISTRATIVE CODE, RULE §334.9. Underground and aboveground storage tanks.

INSTRUCTION. The written notification must include the names and addresses of the seller (or grantor) and the purchaser (or grantee), the number of tanks involved, a description of each tank (capacity, tank material, and product stored, if applicable), and the agency's designated facility identification number (if the entire facility is being conveyed). Also, this statement:

"The [underground//aboveground] storage tank(s) which are included in this conveyance are presumed to be regulated by the Texas Commission on Environmental Quality and may be subject to certain registration, compliance self-certification, construction notification, and other requirements found in Title 30 Texas Administrative Code, Chapter 334."

B-2. AGRICULTURE CODE §60.063. Agricultural development district.

INSTRUCTION. Statute requires the District's board to prescribe the form of notice.

B-3. FEDERAL TRADE COMMISSION RULES §460.16. Insulation.

INSTRUCTION. Sec. 460.16 What new home sellers must tell new home buyers. If you are a new home seller, you must put the following information in every sales contract: The type, thickness, and R-value of the insulation that will be installed in each part of the house. There is an exception to this rule. If the buyer signs a sales contract before you know what type of insulation will be put in the house, or if there is a change in the contract, you can give the buyer a receipt stating this information as soon as you find out.

Example taken from TREC Form 24-7, New Home Contract (Completed Construction), Paragraph 7D.

- D. **INSULATION:** As required by Federal Trade Commission Regulations, the information relating to the insulation installed or to be installed in the Improvements at the Property is: (check only one box below)
- (1) as shown in the attached specifications.
- (2) as follows:
- a) Exterior walls of improved living areas: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.
 - b) Walls in other areas of the home: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.
 - c) Ceilings in improved living areas: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.
 - d) Floors of improved living areas not applied to a slab foundation: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.

e) Other insulated areas: insulated with _____ insulation to a thickness of ____ inches which yields an R-Value of ____.

All stated R-Values are based on information provided by the manufacturer of the insulation.

B-4. (FEDERAL) INTERNAL REVENUE CODE - FIRPTA.

(Foreign Investment in Real Property Tax Act of 1980). This is how TREC contracts address FIRPTA in the body of contract:

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

B-5. HEALTH & SAFETY CODE §361.539(a). Notice of solid waste landfill.

INSTRUCTION. An owner of land that overlies a closed municipal solid waste landfill facility shall prepare a written notice stating the former use of the facility, the legal description of the pertinent part of the land, notice of the restrictions on the development or lease of the land imposed by this subchapter, and the name of the owner. The owner shall file for record the notice in the real property records in the county where the land is located.

B-6. HOUSTON CITY ORDINANCE 89-1312. Notice of restrictive covenants.

NOTICE TO PURCHASER(S)

“The real property described below, which you are purchasing, is subject to deed restrictions recorded at _____ of the County _____ records. (Identify the volume and page, clerk’s file number or film code number and the title of the records in which the restrictions are recorded; if the restrictions have been amended or extended, or if the property is subject to restrictions recorded at various places, then identify each filing; be certain to include reference to subdivision and other map filings to the extent they include setback lines or other restrictions.) **THE RESTRICTIONS LIMIT YOUR USE OF THE PROPERTY. THE CITY OF HOUSTON IS AUTHORIZED BY STATUTE TO ENFORCE COMPLIANCE WITH CERTAIN DEED RESTRICTIONS.** You are advised that, in the absence of a declaratory judgment that the referenced restrictions are no longer enforceable, the City of Houston may sue to enjoin a violation of such restrictions. **ANY PROVISIONS THAT RESTRICT THE SALE, RENTAL, OR USE OF THE REAL PROPERTY ON THE BASIS OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN ARE UNENFORCEABLE;** however, the inclusion of such provisions does not render the remainder of the deed restrictions invalid. The legal description and street address of the property you are acquiring are as follows: (insert legal description or attach and refer to by designated exhibit; state street address).”

[Seller signs and dates]

“The undersigned admit receipt of the foregoing notice at or prior to closing the purchase of property above described.”

[Purchaser signs and dates]

B-7. LOCAL GOVERNMENT CODE §232.0033. Notice of proximity to transportation corridor.

THE PROPERTY IS LOCATED WITHIN THE AREA OF THE ALIGNMENT OF A TRANSPORTATION PROJECT AS SHOWN IN THE FINAL ENVIRONMENTAL DECISION DOCUMENT THAT IS APPLICABLE TO THE FUTURE TRANSPORTATION CORRIDOR.

B-8. NATURAL RESOURCES CODE §33.135. Notice of tidally influenced coastal 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.

"NOTICE REGARDING COASTAL AREA PROPERTY

"(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.

"(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."

B-9. NATURAL RESOURCES CODE §61.025. Notice of open and risky beach property. **(2007-C)**
(Double underlined text is new in 2007)

CONCERNING THE PROPERTY AT _____

DISCLOSURE NOTICE CONCERNING LEGAL AND ECONOMIC RISKS
OF PURCHASING COASTAL REAL PROPERTY NEAR A BEACH

WARNING: THE FOLLOWING NOTICE OF POTENTIAL RISKS OF ECONOMIC LOSS TO YOU AS THE
PURCHASER OF COASTAL REAL PROPERTY IS REQUIRED BY STATE LAW.

• READ THIS NOTICE CAREFULLY. DO NOT SIGN THIS CONTRACT UNTIL YOU FULLY
UNDERSTAND THE RISKS YOU ARE ASSUMING.

• BY PURCHASING THIS PROPERTY, YOU MAY BE ASSUMING ECONOMIC RISKS OVER
AND ABOVE THE RISKS INVOLVED IN PURCHASING INLAND REAL PROPERTY.

• IF YOU OWN A STRUCTURE LOCATED ON COASTAL REAL PROPERTY NEAR A GULF
COAST BEACH, IT MAY COME TO BE LOCATED ON THE PUBLIC BEACH BECAUSE OF COASTAL
EROSION AND STORM EVENTS.

• AS THE OWNER OF A STRUCTURE LOCATED ON THE PUBLIC BEACH, YOU COULD BE
SUED BY THE STATE OF TEXAS AND ORDERED TO REMOVE THE STRUCTURE.

• THE COSTS OF REMOVING A STRUCTURE FROM THE PUBLIC BEACH AND ANY OTHER
ECONOMIC LOSS INCURRED BECAUSE OF A REMOVAL ORDER WOULD BE SOLELY YOUR
RESPONSIBILITY.

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.

Much of the Gulf of Mexico coastline is eroding at rates of more than five feet per year. Erosion rates for
all Texas Gulf property subject to the open beaches act are available from the Texas General Land Office.

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. OWNERS OF STRUCTURES ERECTED SEAWARD OF THE VEGETATION LINE (OR OTHER APPLICABLE EASEMENT BOUNDARY) OR THAT BECOME SEAWARD OF THE VEGETATION LINE AS A RESULT OF PROCESSES SUCH AS SHORELINE EROSION 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.

B-10. OCCUPATIONS CODE §1101.555. Notice to buyer regarding abstract or title policy. *(Statute does not specify text. Sample language from TREC contract.)*

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

B-11. OCCUPATIONS CODE §1303.302. Residential services contract.

INSTRUCTION. A seller of a residential property or the buyer's or seller's agent shall provide to the buyer a statement that clearly and conspicuously states that: (1) the purchase of a residential service contract is optional; and (2) the buyer may purchase similar coverage through another residential service company or insurance company authorized to engage in business in this state.

B-12. TPC §5.008(b). Seller's disclosure of property condition. (2007-C)
[Double underlined parts added 2007]

SELLER'S DISCLOSURE NOTICE 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).

- ___ Range ___ Oven ___ Microwave
- ___ Dishwasher ___ Trash Compactor ___ Disposal
- ___ Washer/Dryer Hookups
- ___ Window Screens ___ Rain Gutters
- ___ Security System ___ Fire Detection Equipment
- ___ Intercom System
- ___ TV Antenna ___ Cable TV Wiring ___ Satellite Dish
- ___ Ceiling Fan(s) ___ Attic Fan(s) ___ Exhaust Fan(s)
- ___ Central A/C ___ Central Heating ___ Wall/Window Air Conditioning
- ___ Plumbing System ___ Septic System ___ Public Sewer System
- ___ Patio/Decking ___ Outdoor Grill ___ Fences
- ___ Pool ___ Sauna ___ Spa ___ Hot Tub ___ Pool Equipment ___ Pool Heater
- ___ Automatic Lawn Sprinkler System
- ___ Fireplace(s) & Chimney (Woodburning)
- ___ Fireplace(s) & Chimney (Mock)
- ___ Gas Lines ___ Gas Fixtures (Nat./LP)
- Garage: ___ Attached ___ Not Attached ___ Carport
- 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. Does the property have working smoke detectors installed in accordance with the smoke detector requirements of Chapter 766, Health and Safety Code? Yes No Unknown. If the answer to the question above is no or unknown, explain. (Attach additional sheets if necessary):

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

- Interior Walls Ceilings Floors Exterior Walls
- Doors Windows Roof Foundation/Slab(s) Basement
- Walls/Fences Driveways Sidewalks Plumbing/Sewers/Septics Systems
- Electrical Lighting Fixtures
- Other Structural Components (Describe): _____

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

4. 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)
- Previous Termite Treatment
- Previous Termite Damage
- Termite or Wood Rot Needing Repair
- Previous Structural or Roof Repair
- Hazardous or Toxic Waste
- Asbestos Components Radon Gas Lead Based Paint Aluminum Wiring
- Urea formaldehyde Insulation
- Previous Flooding Improper Drainage Water Penetration Located in 100-Year Floodplain
- Previous Fires Present Flood Insurance Coverage
- Unplatted Easements
- Landfill, Settling, Soil Movement, Fault Lines Subsurface Structure or Pits
- Previous Use of Premises for Manufacture of Methamphetamine

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

5. 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).

6. Are you (Seller) aware of any of the following? Write Yes (Y) if you 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.

B-15. TPC §5.012. Notice of obligations related to POA membership.

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

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.

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

B-16. TPC §5.013. Notice of subsurface pipeline.

INSTRUCTION. A written notice disclosing the location of a transportation pipeline, including a pipeline for the transportation of natural gas, natural gas liquids, synthetic gas, liquefied petroleum gas, petroleum or a petroleum product, or a hazardous substance. The notice must state the information to the best of the seller's belief and knowledge as of the date the notice is completed and signed by the seller. If the information required to be disclosed is not known to the seller, the seller shall indicate that fact in the notice.

B-17. TPC §5.014. Notice of public improvement district.

NOTICE OF OBLIGATION TO PAY PUBLIC IMPROVEMENT DISTRICT ASSESSMENT
TO (municipality or county levying assessment) CONCERNING
THE PROPERTY AT (street address)

As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment.

The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

Date: _____
Signature of Purchaser

B-18. TPC §5.016/Warranties. Notice of exemption from TRCCA. (2007-N)

NOTICE OF NONAPPLICABILITY OF CERTAIN WARRANTIES
AND BUILDING AND PERFORMANCE STANDARDS

The property that is subject to this contract is exempt from Title 16, Property Code, including the provisions of that title that provide statutory warranties and building and performance standards.

B-19. TPC §5.016/Liens. Notice of unreleased liens. (2007-N)

WARNING: ONE OR MORE RECORDED LIENS HAVE BEEN FILED THAT MAKE A CLAIM AGAINST THIS PROPERTY AS LISTED BELOW. IF A LIEN IS NOT RELEASED AND THE PROPERTY IS CONVEYED WITHOUT THE CONSENT OF THE LIENHOLDER, IT IS POSSIBLE THE LIENHOLDER COULD DEMAND FULL PAYMENT OF THE OUTSTANDING BALANCE

OF THE LIEN IMMEDIATELY. YOU MAY WISH TO CONTACT EACH LIENHOLDER FOR FURTHER INFORMATION AND DISCUSS THIS MATTER WITH AN ATTORNEY.

B-20. TPC §11.008. Notice of confidentiality rights. **(2007-C)**

(An instrument transferring an interest in real property to or from an individual must include a notice that appears on the top of the first page of the instrument in 12-point boldfaced type or 12-point uppercase letters and reads substantially as follows - as amended in 2007.)

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

B-21. TPC §27.007(a). RCLA Notice. **(2007-C)**

(Effective 9/1/07, RCLA notice does not have to be next to buyers' signatures, as previously required.)

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 a construction defect. If you have a complaint concerning a construction defect and that defect has not been corrected as may be required by law or by contract, 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-22. TPC §82.059(a). Plat certification.

INSTRUCTION. Each plat or plan must be legible and contain a certification that the plat or plan contains all information required by this section.

"I hereby certify that as of <date>, this Survey contains all the information required of Plats and Plans under Section 82.059 of the Texas Uniform Condominium Act, Chapter 82, Texas Property Code."

B-23. TPC §82.116. Management certificate (condominium).

INSTRUCTION. An association shall record in each county in which any portion of the condominium is located a certificate, signed and acknowledged by an officer of the association, stating:

- (1) the name of the condominium;
- (2) the name of the association;
- (3) the location of the condominium;
- (4) the recording data for the declaration;
- (5) the mailing address of the association, or the name and mailing address of the person or entity managing the association; and
- (6) other information the association considers appropriate.

B-24. TPC - §82.157(a). Condominium resale certificate. *(use with condos only)*

INSTRUCTION. (a) . . . The resale certificate must be issued by the association and must contain the current operating budget of the association and statements of:

- (1) any right of first refusal or other restraint contained in the declaration that restricts the right to transfer a unit;
- (2) the amount of the periodic common expense assessment and the unpaid common expenses or special assessments currently due and payable from the selling unit owner;
- (3) other unpaid fees or amounts payable to the association by the selling unit owner;
- (4) capital expenditures, if any, approved by the association for the next 12 months;
- (5) the amount of reserves, if any, for capital expenditures and of portions of those reserves designated by the association for a specified project;

- (6) any unsatisfied judgments against the association;
- (7) the nature of any pending suits against the association;
- (8) insurance coverage provided for the benefit of unit owners;
- (9) whether the board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned to that unit violate the declaration, bylaws, or association rules;
- (10) whether the board has received notice from a governmental authority concerning violations of health or building codes with respect to the unit, the limited common elements assigned to that unit, or any other portion of the condominium;
- (11) the remaining term of any leasehold estate that affects the condominium and the provisions governing an extension or renewal of the lease; and
- (12) the name, mailing address, and telephone number of the association's managing agent, if any.

B-25. TPC §207.003(b). Subdivision resale certificate. *(not for use with condos)*

INSTRUCTION. (b) A resale certificate under Subsection (a) must contain:

- (1) a statement of any right of first refusal or other restraint contained in the restrictions or restrictive covenants that restricts the owner's right to transfer the owner's property;
- (2) the frequency and amount of any regular assessments;
- (3) the amount of any special assessment that is due after the date the resale certificate is prepared;
- (4) the total of all amounts due and unpaid to the property owners' association that are attributable to the owner's property;
- (5) capital expenditures, if any, approved by the property owners' association for the property owners' association's current fiscal year;
- (6) the amount of reserves, if any, for capital expenditures;
- (7) the property owners' association's current operating budget and balance sheet;
- (8) the total of any unsatisfied judgments against the property owners' association;
- (9) the style and cause number of any pending lawsuit in which the property owners' association is a defendant;
- (10) a copy of a certificate of insurance showing the property owners' association's property and liability insurance relating to the common areas and common facilities;
- (11) a description of any conditions on the owner's property that the property owners' association board has actual knowledge are in violation of the restrictions applying to the subdivision or the bylaws or rules of the property owners' association;
- (12) a summary or copy of notices received by the property owners' association from any governmental authority regarding health or housing code violations existing on the preparation date of the certificate relating to the owner's property or any common areas or common facilities owned or leased by the property owners' association;
- (13) the amount of any administrative transfer fee charged by the property owners' association for a change of ownership of property in the subdivision;
- (14) the name, mailing address, and telephone number of the property owners' association's managing agent, if any; and
- (15) a statement indicating whether the restrictions allow foreclosure of a property owners' association's lien on the owner's property for failure to pay assessments.

B-26. TPC §209.004. Management certificate (residential subdivisions)

INSTRUCTION. A property owners' association shall record in each county in which any portion of the residential subdivision is located a management certificate, signed and acknowledged by an officer or the managing agent of the association, stating:

- (1) the name of the subdivision;
- (2) the name of the association;
- (3) the recording data for the subdivision;
- (4) the recording data for the declaration;
- (5) the mailing address of the association or the name and mailing address of the person managing the association; and
- (6) other information the association considers appropriate.

B-27. TPC §420.001. TRCCA contract notice. (2007-N)

STATE LAW REQUIRES THAT A PERSON HOLD A CERTIFICATE OF REGISTRATION FROM THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION IF THE PERSON CONTRACTS TO CONSTRUCT A NEW HOME OR IF THE PERSON CONTRACTS TO CONSTRUCT A MATERIAL IMPROVEMENT TO AN EXISTING HOME OR CERTAIN IMPROVEMENTS TO THE INTERIOR OF AN EXISTING HOME AND THE TOTAL COST OF THE IMPROVEMENT IS \$10,000 OR MORE (INCLUDING LABOR AND MATERIALS).

YOU MAY CONTACT THE COMMISSION AT [insert commission's telephone number] TO FIND OUT WHETHER THE BUILDER HAS A VALID CERTIFICATE OF REGISTRATION. THE COMMISSION HAS INFORMATION AVAILABLE ON THE HISTORY OF BUILDERS, INCLUDING SUSPENSIONS, REVOCATIONS, COMPLAINTS, AND RESOLUTION OF COMPLAINTS.

THIS CONTRACT IS SUBJECT TO CHAPTER 426, PROPERTY CODE. THE PROVISIONS OF THAT CHAPTER GOVERN THE PROCESS THAT MUST BE FOLLOWED IN THE EVENT A DISPUTE ARISES OUT OF AN ALLEGED CONSTRUCTION DEFECT. IF YOU HAVE A COMPLAINT CONCERNING A CONSTRUCTION DEFECT YOU MAY CONTACT THE COMMISSION AT THE TOLL-FREE TELEPHONE NUMBER TO LEARN HOW TO PROCEED UNDER THE STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS.

[**Note:** the commission's telephone number is found at <http://www.trcc.state.tx.us/>]

B-28. TPC §420.002. TRCCA contract requirements. (2007-N)

INSTRUCTION. In a contract for the construction of a new home or an improvement to an existing home required to be registered under Section 426.003, the contract is not enforceable against a homeowner unless the contract: (1) contains the builder's name and certificate of registration number; and (2) contains the notice required by Section 420.001

B-29. TPC §420.003. TRCCA - conspicuous binding arbitration provisions. (2007-N)

INSTRUCTION. In a contract for the construction of a new home or the improvement of an existing home required to be registered under Section 426.003 and that contains a provision requiring the parties to submit a dispute arising under the contract to binding arbitration, the provision must be conspicuously printed or typed in a size equal to at least 10-point bold type or the computer equivalent.

B-30. TRANSPORTATION CODE §257.005(a). Notice of road district.

INSTRUCTION. (a) Before the final closing of a sale of real property located in a road district, the seller shall furnish to the buyer of the real property a written notice, executed and acknowledged by the seller, that:

(1) contains a statement that the real property is located in the road district and includes the name of the district;

(2) states the total amount of any bonds, notes, or other obligations that have been approved and authorized to be issued by the district but have not been issued; and

(3) states the total amount of any bonds, notes, or other obligations payable from property taxes that have been issued and sold by the district, if any, and the district's current tax rate if this subdivision applies.

(b) The seller shall provide to the road district a copy of the notice.

(c) The notice is sufficient if it substantially complies with this section.

B-31. WATER CODE §13.257(d). Notice of certificated area for water or sewer service.

"The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and

contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property.

"The undersigned 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.

Date

Signature of Purchaser

" 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."

B-32. WATER CODE §49.452(b). Notice of special district.

(For property is located in a district within the ETJ of one or more home-rule municipalities but not within the corporate boundaries of any municipality.)

"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."

B-33. WATER CODE §49.452(c). Notice of special district.
(For property is located in a district within the corporate boundaries of a municipality.)

"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:

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."

B-35. CARL'S NOTICE OF NO KNOWN NOTICE *(place tongue firmly in cheek)*

"You are hereby given notice that every two years the Texas Legislature may change the wording of some notices that are required for use with real estate documents and contracts, and may mandate additional notices. Although we try to stay abreast of law changes, it is possible that public laws may require notices of which we have no actual notice, or may require new wording for notices used in this instrument. The omission of such a notice or updated wording from this instrument is not intentional and will be corrected as soon as we know better."

APPENDIX C
CHANGES TO TUCA SINCE 1993 ADOPTION

(Arranged by Section Number)

Revised by H.B. 1285 by Van de Putte (1997) - Effective 1-1-1998

§82.002. APPLICABILITY. (c) This section and the following sections apply to a condominium in this state for which the declaration was recorded before January 1, 1994: Sections 82.005, 82.006, 82.007, 82.053, 82.054, 82.102(a)(1)-(7) and (12)-(22), 82.108, 82.111, 82.113, 82.114, 82.116, 82.157, and 82.161. The definitions prescribed by Section 82.003 apply to a condominium in this state for which the declaration was recorded before January 1, 1994, to the extent the definitions do not conflict with the declaration. The sections listed in this subsection apply only with respect to events and circumstances occurring on or after January 1, 1994, and do not invalidate existing provisions of the declaration, bylaws, or plats or plans of a condominium for which the declaration was recorded before January 1, 1994.

§82.051. CREATION OF CONDOMINIUM. This Section of TUCA experienced three amendments in the 2007 legislative session. Subsection (d) was amended, and two new Subsections (f) were added. (The two (f) subsection may eventually be relettered as (f) and (g)).

Revised by H.B. 989 (2007) - Effective 9-1-2007 (Changes Shown)

§82.051 (d) A county clerk shall, without prior approval from any other authority, record declarations and amendments to declarations in the real property records[;] and [~~a county clerk shall~~] record condominium plats or plans in the real property records or in books maintained for that purpose[~~, as a declarant may request~~]. If a county clerk maintains a [The] book for the condominium plat records, the book shall be the same size and type as the book for recording subdivision plats.

Added by H.B. 989 (2007) - Effective 9-1-2007 (All New)

§82.051 (f) A person may not file for record or have recorded in the county clerk's office a plat, replat, or amended plat or replat of a condominium unless the plat, replat, or amended plat or replat has attached to it an original tax certificate from each taxing unit with jurisdiction of the real property indicating that no delinquent ad valorem taxes are owed on the real property. If the plat, replat, or amended plat or replat is filed after September 1 of a year, the plat, replat, or amended plat or replat must also have attached to it a tax receipt issued by the collector for each taxing unit with jurisdiction of the property indicating that the taxes imposed by the taxing unit for the current year have been paid or, if the taxes for the current year have not been calculated, a statement from the collector for the taxing unit indicating that the taxes to be imposed by that taxing unit for the current year have not been calculated. If the tax certificate for a taxing unit does not cover the preceding year, the plat, replat, or amended plat or replat must also have attached to it a tax receipt issued by the collector for the taxing unit indicating that the taxes imposed by the taxing unit for the preceding year have been paid. This subsection does not apply if a taxing unit acquired the condominium for public use through eminent domain proceedings or voluntary sale.

Added 2007 by H.B. 3232 - Effective 5-22-2007 (All New)

§82.051 (f) This chapter does not permit development of a subdivision golf course, as defined by Section 212.0155(b), Local Government Code, without a plat if the plat is otherwise required by applicable law. A municipality may require as a condition to the development of a previously platted or unplatted subdivision golf course that the subdivision golf course be platted or replatted.

Added 2003 by H.B. 2200 by Solomons - Effective 9-1-2003 (All New)

§ 82.0675. RESTRICTION RELATING TO CLUB MEMBERSHIP. (a) A provision of a declaration or recorded contract that requires owners of units in a condominium to maintain a membership in a specified private club is not valid after the 10th anniversary of the date the provision is recorded or renewed unless renewed after the ninth anniversary of that date in the manner provided by the declaration or recorded contract for amending the declaration or recorded contract and the text of the renewed provision is filed in the real property records of each county in which the condominium is located.

(b) A provision described by this section may not be enacted or renewed as a bylaw by the unit owners' association.

Added 1997 by H.B. 1285 - Effective 1-1-1998 (All New)

§ 82.070. MEETING AT WHICH AMENDMENTS MAY BE ADOPTED. (a) An association or a board may not meet to adopt an amendment or other change to the declaration, articles of incorporation, bylaws, or rules of the association unless the association or board has given to each unit owner a document showing the specific amendment or other change that would be made to the declaration, articles of incorporation, bylaws, or rules.

(b) The information described by Subsection (a) must be given to each unit owner after the 20th day but before the 10th day preceding the date of the meeting. The information is considered to have been given to a unit owner on the date the information is personally delivered to the unit owner, as shown by a receipt signed by the unit owner, or on the date shown by the postmark on the information after it is deposited in the United States mail with a proper address and postage paid.

Revised + Added 1997 by H.B. 1285 by Van de Putte - Effective 1-1-1998 (Underlined Parts New)

§ 82.108. MEETINGS. (a) Meetings of the association must be held at least once each year. Unless the declaration provides otherwise, special meetings of the association may be called by the president, a majority of the board, or unit owners having at least 20 percent of the votes in the association. [~~Notice of a meeting shall be given in accordance with the bylaws.~~]

(b) Meetings of the association and board must be open to unit owners, subject to the right of the board to adjourn a meeting of the board and reconvene in closed executive session to consider actions involving personnel, pending litigation, contract negotiations, enforcement actions, matters involving the invasion of privacy of individual unit owners, or matters that are to remain confidential by request of the affected parties and agreement of the board. The general nature of any business to be considered in executive session must first be announced at the open meeting.

(c) Unless the declaration, bylaws, or articles of incorporation of the association provide otherwise:

(1) a meeting of the board may be held by any method of communication, including electronic and telephonic, if:

(A) notice of the meeting has been given in accordance with Subsection (e);

(B) [by which] each director may hear and be heard by every other director; and

(C) the meeting does not involve voting on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular association member before the member has an opportunity to attend a board meeting to present the member's position, including any defense, on the issue; and

(2) ~~in lieu of a meeting,~~ the board may act by unanimous written consent [~~consents~~] of all the directors, without a meeting, if:

(A) the board action does not involve voting on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular association member before the member has an opportunity to attend a board meeting to present the member's position, including any defense, on the issue; and

(B) a record of the board action is [to be] filed with the minutes of board meetings.

(d) Notice of a meeting of the association must be given as provided by the bylaws, or, if the bylaws do not provide for notice, notice must be given to each unit owner in the same manner in which notice is given to members of a nonprofit corporation under Section A, Article 2.11, Texas Non-Profit Corporation Act (Article 1396-2.11, Vernon's Texas Civil Statutes).

(e) Notice of a meeting of the board must be given as provided by the bylaws, or, if the bylaws do not provide for notice, notice must be given to each board member in the same manner in which notice is given to members of the board of a nonprofit corporation under Section B, Article 2.19, Texas Non-Profit Corporation Act (Article 1396-2.19, Vernon's Texas Civil Statutes).

(f) An association, on the written request of a unit owner, shall inform the unit owner of the time and place of the next regular or special meeting of the board. If the association representative to whom the request is made does not know the time and place of the meeting, the association promptly shall obtain the information and disclose it to the unit owner or inform the unit owner where the information may be obtained.

APPENDIX D LINKS

STATE BAR OF TEXAS (conduit to Online Library)

<http://www.texasbarcle.com>

Hint: This is an electronic compilation of all State Bar sponsored CLE articles since 1998, and an addicting resource. Nonsubscribers may download articles for a fee. Subscribers find this a wonderful place to start almost any research task. Be mindful that statutes may have changed since articles were written.

TCEQ - Texas Commission on Environmental Quality

<http://www.tceq.state.tx.us/>

TEXAS LEGISLATIVE COUNCIL - Official Website

<http://www.tlc.state.tx.us>

<http://www.tlc.state.tx.us/legal/dm/draftingmanual.pdf> (Large file to download)

TEXAS LEGISLATURE ONLINE - State Legislature's Official Website

<http://www.capitol.state.tx.us/>

TEXAS ONLINE - State's Official Website

<http://www.state.tx.us/>

TRCC - Texas Residential Construction Commission

<http://www.trcc.state.tx.us/>

TREC - TREC - Contract Forms

<http://www.trec.state.tx.us/formslawscontracts/forms/forms-contracts.asp>

CITY ORDINANCES

State Link to Cities' Websites

<http://www.state.tx.us/category.jsp?language=eng&categoryId=6.1.1>

Municode

<http://www.municode.com/>

Lexis Nexis City Codes

<http://www.lexisnexis.com/municipalcodes/>

American Legal Publishing Corp.

<http://www.amlegal.com/library/>

CONDOMINIUM PLAT

Texas Attorney General Opinion

<http://www.oag.state.tx.us/opinions/op50abbott/ga-0223.htm>

ELECTRO MAGNETIC FIELDS (EMF)

<http://www.niehs.nih.gov/health/topics/agents/emf/>

FAIR HOUSING LAWS

Fair Housing Act, Title VIII of the Civil Rights Act of 1968

<http://www.usdoj.gov/crt/housing/title8.htm>

<http://www.HUD.gov/offices/fheo/FHLaws/>

Occupancy Quotes

<http://www.hud.gov/offices/cpd/communitydevelopment/toolkit/files/KeatingMemorandum.pdf>

Housing for Older Persons Act of 1995 (HOPA)

<http://www.hud.gov/offices/fheo/seniors/index.cfm>

FHA APPROVAL for Condos by HUD

<http://www.hud.gov/local/tx/library/archives/2005-07-11condo.cfm>

FOREIGN PERSON (IRS)

<http://www.irs.gov/businesses/small/international/article/0,,id=105000,00.html>
<http://www.irs.gov/pub/irs-pdf/f8288.pdf>

HANDICAP

Americans with Disabilities Act of 1990

<http://www.usdoj.gov/crt/ada/publicat.htm>

The Federal Architectural Barriers Act of 1968

<http://www.access-board.gov/about/laws/ABA.htm>

INSULATION

<http://www.ftc.gov/bcp/rulemaking/rvalue/16cfr460.shtm>

INTERSTATE LAND SALES (HUD)

<http://www.hud.gov/offices/hsg/sfh/ils/ilshome.cfm>
<http://www.hud.gov/offices/hsg/sfh/ils/ilsstat.cfm>

LEAD-BASED PAINT

Residential Lead-Based Paint Hazard Reduction Act of 1992

<http://www.epa.gov/lead/pubs/titleten.html>

Residential Lead-Based Paint Disclosure Program

<http://www.epa.gov/lead/pubs/leadbase.htm>
<http://www.epa.gov/lead/pubs/leadpdf.pdf>
<http://www.epa.gov/lead/pubs/leadprot.htm>

U. S. Environmental Protection Agency information about lead based paint

<http://www.epa.gov/lead/>

RADON GAS

<http://www.epa.gov/radon/>
<http://www.epa.gov/radon/zonemap.html>

REPTL - Real Estate Probate & Trust Law Section (of State Bar)

<http://www.reptl.org>

SEX OFFENDER REGISTRATION PROGRAM

https://records.txdps.state.tx.us/DPS_WEB/Sor/index.aspx

TELEVISION - EQUIPMENT (ANTENNA, SATELLITE, CABLE)

Telecommunications Act of 1996

<http://www.fcc.gov/telecom.html>

Rules for Over the Air Reception Devices

<http://www.fcc.gov/mb/facts/otard.html>

TELEVISION - SERVICE CONTRACTS

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-189A1.pdf

WILDLIFE - ENDANGERED OR THREATENED SPECIES

(Federal) The Endangered Species Act of 1973

www.fws.gov/endangered/

Texas Parks & Wildlife Department - Endangered Species

www.tpwd.state.tx.us/nature/entang/