

**CONDOMINIUM SALES & REALES UNDER  
THE TEXAS UNIFORM CONDOMINIUM ACT  
Chapter 82, Texas Property Code**

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**(since November 2002)**

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# CONDOMINIUM SALES & REALES UNDER TUCA

by Sharon Reuler

## I. INTRODUCTION

In 1993, Texas became the twenty-first state to adopt a second generation condominium statute based on the model Uniform Condominium Act or the model Uniform Common Interest Ownership Act. Texas' Uniform Condominium Act, nicknamed "TUCA," became effective on January 1, 1994, as Chapter 82 of the Property Code.

Although TUCA is based on a model act, at least one-third of the new law is unique to Texas. A discussion of TUCA's development and a detailed comparison with the model act are included in my presentation at the 1994 Advanced Real Estate Drafting Course.

A long and comprehensive statute, TUCA deals with the creation, operation, and conveyancing of condominiums. This paper focuses solely on 3 of the many types of conveyances that are subject to TUCA: the sale of units by the declarant, resales of units by owners other than the declarant, and the association's foreclosure of its assessment lien against units.

As noted in the introduction to my 1994 presentation, that paper and this one are part of a "work in progress," to be enlarged as time, resources, and publication opportunities permit. Because of TUCA's newness, and the uniqueness of many of its provisions, we are still discovering how it works and what it means. Having served as the spokesperson for TUCA during the 1991 and 1993 legislative sessions, I am compiling suggestions for TUCA amendments. I invite your calls and letters about problems you encounter in using the new law.

### A. Definitions Used in This Paper

1. "**TUCA**" (pronounced "too-kah") is the nickname for Chapter 82 of the Texas Property Code, even though the chapter's formal name is the "Uniform Condominium Act." TUCA is an acronym for the Texas version of the UCA, and helps distinguish it from the model UCA.

2. "**Old Act**" refers to Chapter 81 of the Texas Property Code, the original 1963 Texas Condominium Act, which still applies to pre-TUCA condominiums.

3. "**Pre-TUCA**" refers to an event or circumstance that occurred before January 1, 1994, TUCA's effective date.

4. "**Pre-TUCA condominium**" refers to a Texas condominium created before January 1, 1994, which has not amended its declaration to be governed exclusively by TUCA. In other words, the definition applies to condominiums that are subject

to the Old Act and to TUCA's 13 retroactive provisions.

5. "**TUCA-era**" refers to an event or circumstance that occurred on or after January 1, 1994, TUCA's effective date.

6. "**TUCA-era condominium**" refers to a Texas condominium created on or after January 1, 1994, and to a Texas condominium created before January 1, 1994, which has amended its declaration to be governed exclusively by TUCA.

7. "**UCA**". The T-less "UCA" refers to the model Uniform Condominium Act, published in 1980 by the National Conference of Commissioners on Uniform State Laws, as distinguished from Chapter 82 of the Texas Property Code.

8. "**Retroactive**" refers to the 13 provisions of TUCA that are listed in §82.002(c) as applicable to pre-TUCA condominiums. The retroactive provisions apply to every condominium in Texas, regardless of when created, regardless of whether the declaration is "amended for TUCA." However, the retroactive provisions apply only to events and circumstances occurring on or after January 1, 1994.

9. "**CIS**" is the acronym for Condominium Information Statement, TUCA's equivalent of the UCA's "public offering statement," the declarant's disclosure to unit purchasers.

### B. General Applicability

Condominiums are creatures of statute. Texas adopted its first condominium enabling statute in 1963, now Chapter 81 of the Property Code. Referred to here as the "Old Act," Chapter 81 continues to be the governing statute for pre-TUCA condominiums, with some exceptions. TUCA's applicability to a particular condominium is governed by §82.002, which creates 3 categories for applicability purposes:

1. TUCA-era condominiums. A condominium development created on or after January 1, 1994, is governed exclusively by TUCA, according to §82.002(a), and is not subject to the Old Act, according to §82.002(d). A condominium is created when the declaration is initially recorded.

2. Pre-TUCA condominiums that amend. A condominium created before January 1, 1994, may elect to be governed exclusively by TUCA by amending its declaration for that purpose, pursuant to §82.002(a). If it so amends its declaration, the condominium ceases to be subject to the Old Act. Because several of TUCA's most significant provisions automatically apply to pre-TUCA condominiums, we do not expect large numbers of pre-TUCA condominiums to "amend for TUCA."

3. Pre-TUCA condominiums. A condominium created before January 1, 1994, is automatically subject to TUCA's retroactive provisions. Otherwise, pre-TUCA condominiums are governed by the Old Act.

### C. Applicability to Sales

TUCA's general applicability takes on interesting dimensions in the context of unit sales. Consider, for example, the 1995 resale of a unit in a condominium that was created in 1983. The resale is subject to §82.157, the retroactive resale section, but is not subject to §82.156, which gives the resale purchaser a right to cancel the contract -- unless the condominium's declaration was "amended for TUCA."

Or, consider the condominium for which the first phase was created in 1987. Although the declaration was recorded pre-TUCA, units were never sold. The developer begins selling the first phase units in 1995, and adds new phases to the project in 1996 and 1998. Because the declaration was recorded in 1987, pre-TUCA, the developer is not subject to the declarant sale provisions -- *none* of which are retroactive -- unless the condominium's declaration was "amended for TUCA."

Or, consider the condominium created in 1989 that wants to use TUCA's nonjudicial power of sale, found in §82.113, which *is* retroactive to pre-TUCA condominiums. Imagine that the association wants to foreclose the assessment lien on a debt that consists of charges levied before and after 1994. If it does not have a private power of sale in its declaration, it may foreclose nonjudicially only on the TUCA-era portion of the debt -- the charges levied on or after January 1, 1994 -- unless the condominium's declaration was "amended for TUCA."

The importance of paying careful attention to the applicability aspect of TUCA cannot be overemphasized. If you are working with a pre-TUCA condominium, determine whether and how provisions of TUCA apply by referring to §82.002.

### D. Types of Sales & Resales

TUCA addresses a wider spectrum of property conveyancing than the 3 types of unit sales covered by this presentation. The following categorization and itemization of TUCA conveyancing-related provisions are provided as a resource:

#### 1. UNIT SALES

- a. Sale of unit by declarant
- b. Sale of unit by owner other than declarant; i.e., resales
- c. Foreclosure sale of unit. TUCA acknowledges 3 types of foreclosure sales of individual units:

- (1) Foreclosure of a tax lien against individual units - §82.113(l)
- (2) Foreclosure of a deed of trust lien against an individual unit, such as a purchase money or improvement lien - §82.113(b)
- (3) Foreclosure of the association's assessment lien against individual units - §82.113

#### 2. OTHER TYPES OF CONVEYANCES

- a. Conveyance of declarant's interests - §82.104
  - (1) Voluntary conveyance to successor declarant - §82.104
  - (2) Involuntary conveyance - §82.104
- b. Conveyance of common elements - §82.057(f)
- c. Conveyance of limited common element or part of unit between unit owners
  - (1) Reallocation of unit boundaries - §82.062
  - (2) Reallocation of limited common elements - §82.058
- d. Foreclosure sale of parts or all of project
  - (1) Foreclosure of a tax lien against property subject to special declarant rights - §82.104(c)+(d)
  - (2) Foreclosure of liens against the entire project, such as the deed of trust securing declarant's construction loan - §82.068
- e. Termination sale of project by association - §82.113

### E. Legal Description of Unit

On the subject of unit sales, the reader should be aware that the legal description of a condominium unit is now governed by §82.054, a retroactive provision. Unlike the Old Act, TUCA does not require the legal description to recite the unit's allocated percentage of ownership, which is subject to change in a phased condominium. TUCA, on the other hand, does require recording data for all amendments to the declaration, plats, and plans. Due to the revered custom of copying legal descriptions from one conveyance to the next, practitioners may be slow to recognize this significant change in the law.

### F. Resources for Drafting Attorney

The following is an abbreviated and modified version of the resource materials listed in my 1994 presentation:

1. *Uniform Condominium Act (1980)*, with prefatory note and comments, may be purchased from the National Conference of Commissioners on Uniform State Laws, 676 N. St. Clair Street, Suite 1700, Chicago, Illinois 60611, telephone (312) 915-0195.
2. *Uniform Common Interest Ownership Act (1982)*, also available through the National Conference of Commissioners on Uniform State Laws. From the Commissioners' perspective, the UCA has been supplanted by UCIOA, which parallels and incorporates the UCA. Commentary on and amendments of UCIOA may also be applicable to the UCA.
3. *Condominium Development - Forms with Commentary* by Gurdon H. Buck, published by Clark Boardman Callaghan, 1 Publishers Parkway, Webster, New York 14580, telephone (800) 323-1336. Periodically updated, the book comes with Don Buck's forms on diskette. Although the forms are for a state that has adopted the Uniform Common Interest Ownership Act, they can be adapted for use with TUCA. The book's Texas commentary has not yet been updated to reflect adoption of TUCA.
4. *Texas Property Code*
5. *Texas Uniform Condominium Act* by Sharon Reuler, presented at the 1994 Advanced Real Estate Drafting Course, sponsored by State Bar of Texas.

## II. DISCLOSURES TO PURCHASERS

### A. TUCA Disclosures

1. OVERVIEW. TUCA's primary consumer protection feature is its final Subchapter D, titled Protection of Purchasers. Generally, Subchapter D requires unit sellers to disclose to purchasers certain information about the project and the unit. It gives the purchaser a 5-day "free look" after receiving the disclosures during which to cancel the contract without penalty, unless the purchaser received the information before signing the contract. Further, the purchaser may not be forced to close the transaction if he does not receive certain information. TUCA does exempt a few types of transactions from the disclosure requirements. Again, particular attention should be paid to the applicability of Subchapter D.
2. TYPES OF CONVEYANCES. For purposes of disclosures, TUCA divides unit conveyances into 3 categories:
  - a. Declarant Sales. When selling units, the declarant must provide disclosures in the form of a condominium information statement (CIS), which includes the project documents.
  - b. Resales. Conveyances by unit owners other than declarant, called resales, require

disclosures in the form of a resale certificate and project documents. Unlike the CIS, the resale certificate does not include the project documents, which are given separately.

- c. Exemptions. Section 82.151 exempts certain conveyances from the disclosure requirements.

### 3. APPLICABILITY.

a. TUCA-era Condominium. The disclosure requirements of Subchapter D, Protection of Purchasers, apply to every condominium unit that is subject to TUCA in its entirety, meaning every condominium created on or after January 1, 1994, and every pre-TUCA condominium that amended its declaration to be governed exclusively by TUCA.

b. Pre-TUCA Condominium. The only sections of Subchapter D that apply to pre-TUCA condominiums are §82.157 (Resale of Unit) and §82.161 (Effect of Violations on Rights of Action and Attorney's Fees). No other section in Subchapter D, including the exemptions of §82.151 and the purchaser's right to cancel in §82.156, is expressly applicable to pre-TUCA condominiums.

4. EXEMPT CONVEYANCES. Section 82.151 exempts the following 6 types of conveyances from the requirement for some or all of the disclosures:

- (1) Conveyance of a unit in a condominium in which *all* units are restricted to nonresidential use, *if* the parties agree to modify or waive the requirements of TUCA's Subchapter D -- Protection of Purchasers. §82.151(a)
- (2) Gratuitous "disposition." §82.151(b)(1)
- (3) "Disposition" pursuant to court order. §82.151(b)(2)
- (4) "Disposition" by a government or governmental agency. §82.151(b)(3)
- (5) "Disposition" by foreclosure or deed in lieu of foreclosure. §82.151(b)(4)
- (6) "Disposition" that may be canceled at any time, for any reason, and without penalty. §82.151(b)(4)

There are at least 4 complications in using the exemptions of §82.151(b). First, "disposition" is defined by §82.003(a)(13) as a *voluntary* transfer to a "purchaser," which §82.003(a)(20) defines as a person who acquires an interest by means of a *voluntary* transfer. Foreclosures and court-ordered sales are usually not considered *voluntary* transfers.

Second, on unit resales in condominiums with residential units, the exemption of §82.151(a) applies only to preparation and delivery of the resale certificate. The exemption does not extend to the seller's duty to provide current copies of project

documents. This problem does not arise with declarant sales because elimination of the CIS requirement also eliminates delivery of the project documents, which are contained within the CIS.

Third, conveyance of a unit by descent or devise is not listed as an exemption from disclosure requirements. Would a conveyance effected by a unit owner's death be considered a *voluntary* transfer?

Fourth, TUCA's applicability provision, §82.002(c), fails to make §82.151, the exemption provision, applicable to pre-TUCA condominiums. Section 82.151 is not retroactive.

It is worth noting that §82.151 and TUCA's definition of "disposition" come almost directly from the model UCA. The Uniform Commissioners' published comments to the UCA are silent about the above-mentioned points.

5. WAIVER OF DISCLOSURES. Section 82.004 reverses Texas common law that permits a person to voluntarily waive a known statutory right. Titled "Variation by Agreement," §82.004 prohibits waiver of a right conferred by TUCA, unless TUCA expressly permits waiver. Does §82.004's prohibition of waiver apply to pre-TUCA condominiums? Not according to §82.002(c), TUCA's applicability provision. Therefore, TUCA does not prohibit the purchaser of a pre-TUCA condominium unit from waiving TUCA's resale disclosure requirements.

6. TIMELINESS OF DISCLOSURES. TUCA is concerned about the timeliness of disclosures to purchasers. On resales, sellers must furnish copies of "current" project documents and a resale certificate that is no more than 3 months' old. On declarant sales, the CIS must be prepared before publicly offering any interest in a unit. Further, the CIS must be promptly amended whenever its contents materially or substantially change, such as when phases are added to the project.

### B. Section 5.008 Disclosures

Unrelated to TUCA, §5.008 of the Property Code requires the seller of residential property to make certain disclosures to the purchaser. Because of TUCA's numerous and substantial disclosure requirements, it is tempting to think that §5.008 may not apply in some sale situations. Please consider the following:

- Declarant sales of individual units in conversion buildings are subject to §5.008 disclosures, but declarant sales of units in newly constructed buildings are not.
- If a purchaser is buying more than one conversion unit from the declarant in a single transaction, §5.008 disclosures are not required.

- A condominium association that acquires a unit at the foreclosure sale of an assessment lien or judgment lien must provide a §5.008 disclosure when it conveys the unit.
- All resales of residential units require §5.008 disclosures, unless more than one unit is being conveyed in the transaction.
- Unless the condominium association is itself selling a unit, it has no duty to provide unit resellers with §5.008 disclosure information.

## III. UNIT SALES BY DECLARANT

### A. Introduction

TUCA adds a significant new document to the set of project instruments that are typically prepared for a new condominium. The Condominium Information Statement or CIS is TUCA's name for the package of materials and disclosures that the declarant must furnish to the purchaser pursuant to §82.151 *et. seq.* This presentation purposefully focuses on the critical sales document -- the CIS.

Unlike the resale certificate, which had voluntary statewide use for 10 years prior to TUCA's adoption, the CIS concept is entirely new to Texas. Prior to January 1, 1994, Texas law did not require any sales disclosures by condominium developers, although some condominium sales offices dispensed drafts of project documents to prospective purchasers as a courtesy.

TUCA's CIS requirements may seem costly and burdensome to Texas developers who recall the going-and-blowing condo market of the early 1980s. It may be some consolation that TUCA's CIS requirements are watered-down from those in the model UCA, and that TUCA does not penalize the declarant who fails to provide a CIS. (*UCA suggests a penalty of 10 percent of the sales price!*)

Finally, it bears repeating that the CIS is Texas' version of the UCA's "public offering statement," which is the term widely used in mortgage underwriting guidelines, professional literature, and other states' statutes. In other words, Texas *does* require a public offering statement, but we call it a condominium information statement.

### B. Applicability

TUCA's CIS requirement applies only to declarant sales of units in condominiums for which the original declaration is recorded on or after January 1, 1994. It does not apply to condominiums created before January 1, 1994.

What about TUCA-era *phases* of pre-TUCA condominiums? If the original declaration was recorded before January 1, 1994, the CIS requirement does not apply to declarant's sale of

units in future phases, for which declaration *amendments* are recorded on or after January 1, 1994. TUCA's applicability to pre-TUCA condominiums is governed by §82.002(c).

What about small projects? Unlike the UCA which dilutes the CIS requirements for projects with 12 or fewer units, TUCA provides no modification or exemption for small-size projects. As a result, the declarant of a 4-unit condominium has the same disclosure responsibilities as the declarant of a 400-unit condominium.

To recap, TUCA's CIS requirement applies to

- sales, conveyances, transfers, dispositions
- of condominium units
- in a condominium for which the declaration is first recorded on or after January 1, 1994
- regardless of the number of units in the project
- by declarant
- to purchasers other than declarant

### C. Overview of CIS Requirements

1. CONTENTS. TUCA specifies the contents of the CIS in 3 places. The general list of contents is contained in §82.153. Section 82.159 requires disclosure of certain liens against the condominium unless the declarant will release those liens before conveying the property. If the condominium is a conversion, the CIS must contain the additional requirements of §82.154. The required contents are described in more detail in the "Checklist for Preparing Condominium Information Statement," in Appendix A to this paper.

2. PREPARATION AND AMENDMENT OF CIS. Section 82.152(a) requires declarant to prepare a CIS *before* marketing units to the public. Thereafter, declarant must *promptly* amend the CIS to reflect material or substantial changes in its contents, as required by §82.153(c). The addition of units to the project by amendment of the declaration is an obvious material change.

An attorney who prepares a CIS should be mindful that he is preparing a primary marketing tool that will be distributed through the sales office. He should be receptive to suggestions from the marketing staff regarding the attractiveness and readability of the CIS. He should also consider the ease with which the CIS can be reproduced and updated during the marketing program.

The drafting attorney should also be mindful that §82.152(d) assigns liability for false or misleading statements or omissions of material facts. The CIS is typically signed by the declarant, who is

liable for its contents. Portions of the CIS may be prepared by others, such as an engineer, surveyor, insurance agent, or budget preparer, who are liable for their respective statements. However, the declarant may be liable for the misstatements or omissions of others if he "actually knew or should have known" of the misstatement or omission.

### 3. DISTRIBUTION OF CIS

a. Purchasers. In addition to having a duty to prepare the CIS, the declarant has an affirmative duty, under §82.152(c), to deliver the CIS, as amended, to a prospective purchaser before the date of contract or date of closing, *whichever is earlier*. (When does closing predate contract?) The purchaser rightfully expects the CIS he receives to be up-to-date.

What if the CIS is amended between a purchaser's receipt of the CIS and time of closing? If the change *may* materially affect the purchaser, the declarant must provide a copy of the amendment before closing, under §82.153(c). This right to receive the amendment is not coupled with the purchaser's right to cancel the contract based on the disclosures in the amendment.

What if the CIS is amended after closing? TUCA imposes no duty on the declarant to make disclosures to unit owners who have closed on their contracts. However, as reported in the following section, the declarant may have an implied duty to provide copies of all amendments to the association.

b. Association. TUCA may impliedly require declarant to furnish the association with a copy of the original CIS plus all amendments. Section 82.114(a)(3) requires the association to keep, as an association record, "the CIS prepared under §82.152 and any amendments." Because the CIS is not publicly recorded, the association has no means of obtaining the original CIS and subsequent amendments except from declarant.

4. EXEMPTION, WAIVER, OR MODIFICATION OF CIS REQUIREMENT. Section 82.151 exempts 6 types of conveyances from the CIS requirement. Section 82.004 prohibits waiver or modification of TUCA's requirements, unless expressly permitted under a different section of TUCA. Section 82.151(a) does permit modification or waiver of the CIS requirements if the condominium is entirely nonresidential. Otherwise, the CIS requirements may not be waived or modified. Please refer to the above discussions regarding exempt conveyances and waiver of disclosures.

### D. Penalty for Noncompliance

Unlike the model UCA, TUCA does not create a statutory penalty for the declarant who fails to comply with the CIS requirements. Under §82.156(d), however, a declarant may not compel a purchaser to close without a CIS.

### E. Purchaser's Right to Cancel

A penalty-of-sorts under §82.156(b) is the purchaser's right to cancel the contract within 5 days after the purchaser receives the CIS from the declarant, *unless* the purchaser received the CIS *before* signing the contract *or* the contract contained an underlined or bold-print provision ACKNOWLEDGING THE PURCHASER'S RECEIPT OF THE CIS AND RECOMMENDING THAT HE READ THE CIS BEFORE SIGNING THE CONTRACT. To cancel, §82.156(c) requires the purchaser to give written notice of cancellation to the declarant or declarant's agent for service of process by hand delivery or certified mail return receipt requested, within 5 days after receiving the CIS. Because the purchaser may cancel without penalty and without a stated reason, this 5-day right is often called a "free look."

### F. Actions Triggered by Declarant Sales

The start or finish times for numerous rights and responsibilities under TUCA are determined by declarant's sale of units, including the following:

1. Declarant must prepare a CIS before publicly offering any interest in a unit. §82.151(a)
2. The association must be incorporated before declarant conveys the first unit. §82.101
3. The declaration must be recorded before declarant conveys the first unit. Implied by §82.051(a)
4. Before conveying a unit, declarant must record the consent to declaration by each holder of a mortgage on the unit prior to conveyance. §82.051(b)
5. TUCA's insurance requirements become effective when the declarant conveys the first unit. §82.111(a)
6. On the date the first unit is sold, declarant has a duty to give the association copies of certain records. §82.114
7. After declarant conveys the first unit, each unit must be separately taxed and assessed. §82.005(b)
8. When declarant conveys the first unit in property that is subject to the development right of withdrawal, that property may not be withdrawn from the condominium. §82.060(d)
9. Within 120 days after conveyance of 50 percent of the units that may be created, at least 1/3 of the association directors must be elected by owners other than declarant. §82.103(d)
10. The period of declarant control ends 120 days after declarant's conveyance of 75 percent of

the units that may be created, unless the declaration provides a shorter time. §82.103(c)

11. Declarant's right to fund the association's "red ink" instead of paying the allocated assessment on each unit owned by declarant terminates 3 years after declarant's first conveyance of a unit, or when declarant control terminates, whichever is earlier. §82.112(b)+(c)
12. The projected budget provided by declarant as part of the CIS must cover the first fiscal year following the date of the first conveyance to a purchaser. §82.153(a)(6)
13. Declarant's right to maintain offices and models in the condominium expire when declarant ceases to own a unit. §82.065

### G. TUCA Provisions Pertaining to CIS

#### 1. CONTENTS OF CIS:

§82.153(a)+(b) - defined and contents (in general)

§82.154 - additional contents for conversions

§82.159 - disclosure of liens

§82.153(c) - amendment of CIS

## 2. OTHER CIS-RELATED PROVISIONS:

§82.104(e)(3) - successor's duty to provide CIS

§82.114(a)(3) - required to be kept as an association record

§82.151(a) - waiver of protections if nonresidential use

§82.151(b) - dispositions for which CIS not required

§82.152 - liability for preparing CIS

§82.155 - public offering statement instead of CIS

§82.156(b)-(d) - purchaser's right to cancel if CIS not received

## IV. UNIT RESALES

### A. Resale Contract

Between 1983 and 1994, Texas was in the unusual position of having a widely used residential condominium resale contract designed for use with TUCA, but no supporting state law. Although we now have TUCA, the law and the contract are still out of synch.

When TUCA was first introduced to the Texas Legislature in 1981, the Texas Real Estate Broker-Lawyer Committee began working on a resale contract and resale certificate to complement the anticipated new law. The Committee finished its work in 1983, when TUCA's passage seemed likely. Although TUCA did not then become law, the TUCA-type contract was published by the Texas Real Estate Commission ("TREC") for voluntary use by brokers and agents in condominium resale transactions.

Between 1983 and 1994, no one could force a condominium association to prepare a condominium resale certificate. There was no compelling state law and the association was not a party to the TREC resale contract. Nevertheless, use of the TREC condominium resale contract and certificate became commonplace. Many associations furnished resale certificates in the mistaken belief that they had a legal duty to do so.

Between 1981, when TUCA was first introduced, and 1993, when TUCA was finally passed, the purchaser's right to cancel a resale contract was moved from retroactive §82.157 to non-retroactive §82.156. In other words, TUCA, as adopted, does not grant contract cancellation privileges to purchasers of units in pre-TUCA condominiums. The TREC contract, however, *does*. Because that aspect of the TREC contract is not supported by TUCA, it may be waived or modified by the parties.

TREC's condominium resale contract is worthy of more attention than provided here. TUCA, however, does not deal with the resale contract, except for the seller's disclosures and the purchaser's right to cancel.

### B. Overview of Resale Disclosures

The seller is required to give 2 types of disclosures to the purchaser. First, he must provide a current copy of 3 project documents: the declaration, the bylaws, and any association rules. The seller must also provide a resale certificate issued by the association. It is important to note that the resale certificate does *not* include the project documents, as does the CIS on declarant sales. The distinction is important because TUCA provisions that waive the requirement for a resale certificate do not automatically waive the seller's requirement to provide project documents. Also, TUCA's disclosures are in addition to the disclosures required by §5.008 of the Property Code.

1. WHEN REQUIRED. Section 82.157(a) requires resale disclosures when an owner other than a declarant intends to sell a unit. Because §82.157 is retroactive, it applies to sales of *all* condominium units in Texas, other than declarant sales, *unless* the conveyance is exempt under §82.151.

Due to an inexplicable glitch, §82.157 fails to properly reference §82.151 as exemptions from the resale disclosure requirements. The first sentence of §82.157(a) *should* read "Except as provided by Section 82.151," instead of the meaningless reference to "Subsection (c)." Because §82.151 is not retroactive, and because retroactive §82.157(a) fails to expressly incorporate the exemptions of §82.151, it appears that no exemptions from resale disclosures may be available to pre-TUCA condominiums.

2. WAIVER BY PURCHASER. Section 82.004, which is not retroactive, prohibits waiver of any rights conferred by TUCA, unless such waiver is expressly permitted by TUCA. The purchaser of a unit in a pre-TUCA condominium, therefore, is not statutorily prohibited from waiving his rights to the disclosure information.

In addition to the general right of waiver relating to pre-TUCA condominiums, §82.157 contains an express waiver provision. Subsection (b) of §82.157 permits the parties to waive the requirement for a resale certificate (*but not the project documents*) *if* the association fails to provide the certificate and *if* the seller provides an affidavit stating that he tried but failed to obtain it. The waiver should be in writing.

### C. Project documents

1. TYPES. In addition to the resale certificate, §82.157(a) requires the selling owner to furnish a *current* copy of:

- a. The declaration, which is defined by TUCA in §82.003(a)(11).
  - b. The bylaws, which TUCA does not define but uses throughout.
  - c. Any association rules, which TUCA does not define but uses throughout.
2. SOURCE OF CURRENT COPIES. TUCA requires the selling unit owner, not the association, to provide copies of current project documents, but does not specify how the seller acquires the documents. While it seems a ministerial task to furnish current project documents, consider the following prevalent circumstances:
- a. The seller may provide copies of the documents in his possession, without questioning whether they are complete or current. He may have copies of unrecorded or unexecuted project documents that were provided by the developer during presale, or documents from the time of his purchase, minus some or all of the subsequent amendments or restatements.
  - b. Without a search of the real property records, neither the seller nor the association can be assured that it has copies of all restatements and amendments of the declaration.
  - c. Without contacting the association, the seller has no assurance that he has copies of the bylaws, as amended, or the association rules, if any, as amended.
  - d. The association may not have complete and current copies of its own documents. It may have unrecorded versions of recorded documents. It may be missing exhibits to documents. And it may be missing amendments and restated documents.
  - e. Many people refer to the declaration as the "bylaws" of the condominium. They do not distinguish among the various documents and tend to refer to them all, individually and collectively, as the "bylaws."
  - f. Some condominiums developed in the 1970s have 2 documents titled "bylaws." The declaration may have an exhibit titled "condominium bylaws," which contain declaration-type provisions. There may also be a separate document, probably not recorded, containing the administrative and corporate-type bylaws.
  - g. Some associations have multiple sets of rules, including a set that was recorded with the declaration or condominium bylaws, and other sets of rules adopted by the homeowners or the board.
  - h. Some associations claim to have no bylaws or rely on a few bylaw-type provisions in the declaration. Other associations have bylaws that are undated, unsigned, but have reportedly been in use since inception of the condominium.
- i. Do-it-yourself amendments to project documents sometimes have shapes that may not be familiar to attorneys.
  - j. Copies of the recorded declaration are often distributed minus the voluminous exhibits, such as plats and plans, which some people consider extraneous.
  - k. The association may distribute what it considers to be the most important documents or the most important portions of its documents, assuming that no one is interested in the withheld parts.
  - l. The association may distribute documents according to an established policy or practice, without question. "We have given out this package for years without problems or complaints."
- Although neither selling owners nor association leaders intend to undermine TUCA's requirements, many will inadvertently breach the law. Attorneys representing sellers are advised to assure themselves that the seller has current and complete copies of the declaration, bylaws, and association rules. Because the association *should* be the authority on project documents, the selling owner may try to obtain the association's certification of current project documents. Under TUCA, however, even the association's certification does not limit or modify the seller's duty to provide current copies.
- It is interesting to note that TUCA does not expressly require the association to maintain current copies of the project documents. Retroactive §82.114, titled "Association Records," does not identify the basic project documents among the list of records that must be maintained by the association. Although it seems logical to expect an association to have such records, some established associations do not have complete or current sets of their project documents due to changes in management, changes in leadership, and poor record keeping.
- D. Resale certificate**
- In addition to current copies of project documents, the seller must furnish the purchaser with either a resale certificate issued by the association or the seller's affidavit that he was unable to obtain a resale certificate issued by the association.
1. A resale certificate must:
    - a. Be issued by the association. §82.157(a)

- b. Be signed and dated by an officer or authorized agent of the association. §82.157(b)
- c. Contain 12 statements required by TUCA, including a description of insurance coverage provided by the association for the benefit of unit owners, which is usually contained in an attachment to the certificate. §82.157(a)
- d. Be accompanied by a current operating budget for the association. §82.157(a)
- e. Be delivered to the purchaser within 3 months of issuance. §82.157(a)

Because the certificate contains unit-specific and time-specific information, and becomes stale if not received by the purchaser within 90 days, resale certificates cannot be prepared in bulk.

2. Section 82.157(a) requires the following 12 statements by the Association in the form of a resale certificate:

- (1) Any right of first refusal or other restraint contained in the declaration that restricts the right to transfer a unit.

**Comment:** The preparer may not understand that "other restraint" includes restrictions on leasing, as well as sales, and may also include transfer fees or other association charges relating to sales and leases. Enforceable restraints on alienation may exist in project documents other than the one titled "declaration." Regarding the right of first refusal, the statement asks merely whether such a right exists, and not whether the association exercises or waives the right. If a right of first refusal exists, the seller must obtain a separate waiver from the association. The TREC check-off form encourages an incomplete response.

**TREC version:** A. The Declaration  does  does not contain a right of first refusal or other restraint that restricts the right to transfer the 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.

**Comment:** Both TUCA and the TREC form limit the statement to the *seller's* debt, without reference to a debt owing against the unit for which the seller is not personally obligated, such as assessments levied prior to the seller's term of ownership. In other words, the amount subject to the association's lien may differ from the amount for which the seller is personally liable. The statement, however, ask only for the *seller's* liability.

**TREC version:** B. The periodic common expense assessment for the Unit is \$\_\_\_\_\_ per \_\_\_\_\_.

**TREC version:** C. There  is  not a common expense or special assessment due and unpaid by the Seller to the Association. The total unpaid amount is \$\_\_\_\_\_ and is for \_\_\_\_\_.

- (3) Other unpaid fees or amounts payable to the association by the selling unit owner.

**Comment:** This category covers fees and charges that are not included in statement 2 above, such as individual assessments for insurance deductibles, legal fees, collection costs, interest on a debt, and reimbursement for damaged common elements. Refer to the comment for statement 2 above for the seller's liability versus the unit's debt.

**TREC version:** D. Other amounts  are  are not payable by Seller to the Association. The total unpaid amount is \$\_\_\_\_\_ and is for \_\_\_\_\_.

- (4) Capital expenditures, if any, approved by the association for the next 12 months.

**Comment:** "Capital expenditures" is not defined. Is an expenditure "approved by the association" when it is discussed at a board meeting, levied by the board, or announced to the members? Is the requirement met if the association attaches a schedule of projected major expenditures for the current fiscal year that was prepared as part of the annual budgeting process?

**TREC version:** E. Capital expenditures approved by the Association for the next 12 months are \$\_\_\_\_\_.

- (5) The amount of reserves, if any, for capital expenditures and of portions of those reserves designated by the association for a specified project.

**Comment:** Texas law requires condominium associations to audit annually their books and records. Since 1991, the AICPA's Audit Guidelines for Common Interest Realty Associations has required auditors to make certain disclosures about the association's reserve funds. If the association has an audit report for the most recently concluded fiscal year, a copy of that report or a reference to the auditor's statement about reserves should suffice as a response. Reliance on the auditor's statement removes some liability from the association for misinformation about the status of reserves. The TREC form invites a superficial response.

**TREC version:** F. Reserves for capital expenditures are \$ \_\_\_\_; of this amount \$ \_\_\_\_ has been designated for \_\_\_\_\_.

- (6) Any unsatisfied judgments against the association.

**Comment:** The preparer may not understand "unsatisfied judgments." Although TUCA seems to inquire about the number and nature as well as the amount of any unsatisfied judgment, the TREC form asks only for the dollar amount.

**TREC version:** H. The amount of unsatisfied judgments against the Association is \$ \_\_\_\_.

- (7) The nature of any pending suits against the association.

**Comment:** The association may not be mindful of pending cases handled by its insurance carrier. Similarly, it may not be thinking of counterclaims in lawsuits initiated by the association for assessment collection or covenant enforcement. The preparer may need to be prompted to identify pending suits against the association. The TREC form does not probe.

**TREC version:** I. There  are  are not any suits pending against the Association. The nature of the suits is \_\_\_\_\_.

- (8) Insurance coverage provided for the benefit of unit owners.

**Comment:** The preparer may not be qualified to provide detailed information about insurance coverage. It is preferable for the association's insurance provider to respond to this statutory query. The TREC form requests attachment of an insurance summary. In practice, resale certificates are often issued without attachments of any kind. Or, the attachment may be anything relating to insurance coverage, such as a copy of the premium statement. In short, the preparer may think the statement inquires whether or not insurance exists, for which a yes/no answer should suffice in his view.

**TREC version:** J. The Association  does  does not provide insurance coverage for the benefit of unit owners as per the attached summary from the Association's insurance agent. Required attachments: insurance summary.

- (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.

**Comment:** What constitutes "board knowledge"? Does the "board" have knowledge if one director has personal and unofficial knowledge of a violation that may not be obvious? If the association does not carefully tailor its response, it may risk inadvertently issuing an estoppel to future enforcement of an existing violation. It is advisable to specify the basis of the board's knowledge such as "based on an examination of the association's official records." It is also advisable to assert that issuance of the resale certificate does not assure that no other violations exist. In addition to its other limitations, the TREC form goes beyond TUCA by inquiring about alterations or improvements to "any portion of the project." TUCA limits violations to the unit and its appurtenant common elements.

**TREC version:** K. The Board  has  has no knowledge of alterations or improvements to the Unit or to the limited common elements assigned to the Unit or any portion of the project that violate any provision of the Declaration, bylaws or rules of the Association. Known violations are: \_\_\_\_\_.

- (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.

**Comment:** The board's receipt of notice should be expressly limited to the association's official records. Unlike the prior statement, this statement *does* require disclosures about all portions of the condominium, not only the unit being conveyed.

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

- (11) The remaining term of any leasehold estate that affects the condominium and the provisions governing an extension or renewal of the lease.

**Comment:** Although "leasehold condominium" is a TUCA-defined term, this statement does not appear limited to leasehold condominiums. Instead, it inquires about *any leasehold estate*, which could refer to laundry room leases, clubhouse leases, and even leases on units owned by the association.

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

- (12) The name, mailing address, and telephone number of the association's managing agent, if any.

**Comment:** It is puzzling why TUCA requires contact information for the association's managing agent, if any, but not for the association itself if there is no managing agent. Common sense dictates that this space be used to provide contact information regardless of whether the contact is a managing agent, on-site manager, or volunteer owner. The TREC form adjusts for TUCA's oversight by providing a second space, below the signature line, for address and telephone information.

**TREC version:** N. The name, mailing address and telephone number of the Association's managing agent are: \_\_\_\_\_.

### E. Purchaser's Cancellation

1. **LEGISLATIVE HISTORY.** The model UCA, on which TUCA is based, separates cancellation rights on declarant sales and resales. Under the model UCA, the purchaser from the declarant may cancel pursuant to UCA §4-108, "Purchaser's Right to Cancel." The purchaser of a resale may cancel pursuant to UCA §4-109(c), "Resale of Unit." The separation of the cancellation provisions is significant because the resale section (§4-109) applies to condominiums created before the act's effective date, and the declarant sale section (§4-108) does not. Also, under the model UCA, the resale purchaser's 5-day right to cancel is based solely on receipt of the resale certificate. The UCA has no comparable 5-day period based on purchaser's receipt of the project documents.

At some point during TUCA's 13-year incubation, the Texas drafters decided to combine cancellation rights into one section -- §82.156 "Purchaser's Right to Cancel," which otherwise corresponds to UCA §4-108. As a result, the TUCA resale purchaser's 5-day right to cancel was moved *from* retroactive §82.157 *to* non-retroactive §82.156, which does not apply to pre-TUCA condominiums.

TUCA's drafters also decided to create parallel cancellation provisions for declarant sales and resales. The purchaser on a declarant-sale has a 5-day right to cancel based on receipt of the CIS, which includes the project documents. Because the resale certificate does not contain the project documents, TUCA's drafters decided to give the resale purchaser a parallel cancellation right -- based on receipt of the project documents, independent of receipt of the resale certificate.

Again, although TUCA's resale provision, §82.157, is retroactive, the section granting the purchaser's right to cancel a resale contract, §82.156, is not retroactive. Although the purchaser of a pre-TUCA unit may not have a statutory right to cancel the resale contract, the widely-used TREC condominium resale contract *does* grant a 5-day

cancellation period, and without regard to whether the unit is in a pre-TUCA or TUCA-era condominium.

2. **CANCELLATION PROVISIONS.** To emphasize the importance of disclosing information to the purchaser, TUCA creates several opportunities for the purchaser to cancel a unit resale contract:

- a. If the purchaser has not received the project documents *from the seller* before signing the contract, the purchaser may cancel the contract within 5 days after receiving the project documents. §82.156(a)
- b. If the purchaser signs a contract that does not contain an underlined or bold-print provision acknowledging the purchaser's receipt of the project document and recommending that the purchaser read those documents before signing the contract, the purchaser may cancel the contract within 5 days after receiving the project documents. §82.156(a)
- c. If the purchaser has not received a resale certificate before signing the contract, the purchaser may cancel the contract within 5 days of the earlier following event:
  - purchaser receives the resale certificate
  - or purchaser signs a waiver of the resale certificate requirement.
- d. If the seller does not give project documents to the purchaser, seller may not require the purchaser to close. §82.156(d)

From a seller's perspective, the project documents and resale certificate should be given to the purchaser before the contract is signed *and* the contract should contain the recommended underlined or bold-print provision. A presentation of the cancellation alternatives based on receipt of project documents is attached in Appendix C materials.

3. **NOTICE OF CANCELLATION.** To exercise the right to cancel, the purchaser must give notice by the methods specified in §82.156(c), which requires that purchaser's notice of cancellation be given within the 5-day cancellation period:

- by hand-delivery to the selling unit owner
- or by certified mail, return receipt requested, to the "offeror or the offeror's agent for service of process."

The phrase "offeror or the offeror's agent for service of process" appears nowhere else in TUCA. From the context, "offeror" appears to mean "declarant or selling unit owner." Cancellation under TUCA entitles the purchaser to a full refund of all payments made in connection with the contract.

4. LIMITED WAIVER. There are 3 exceptions to §82.004's prohibition of waiver of the required disclosures to the resale purchaser:

- a. Because §82.004 is not retroactive, its prohibition of waiver does not apply to pre-TUCA condominiums. §82.002(c)
- b. The resale certificate requirement may be waived or modified if the unit is in a condominium with no residential units. §82.151(a)
- c. The parties may waive the resale certificate if the seller provides the purchaser with an affidavit that he tried unsuccessfully to obtain a resale certificate from the association. §82.157(b)

#### F. Resale Certificate Process

The resale certificate process hinges on whether the association issues the certificate to the selling owner in a timely manner. For a description of the 2 routes, please refer to "Resale Certificate Process" in Appendix C materials.

#### G. TUCA Provisions Pertaining to Resales

§82.151(a) - waiver of protections if nonresidential use

§82.151(b) - dispositions for which resale certificate not required

§82.156(a),(c)+(d) - resale purchaser's right to cancel if disclosures not received

§82.157(a) - seller's duty to provide current project documents

§82.157(a) - resale certificate defined and contents

§82.157(b) - seller's resale affidavit if association fails to provide a resale certificate

§82.157(b) - waiver of resale certificate by buyer and seller

§82.157 - effect of resale certificate on future assessments

#### V. FORECLOSURE SALES OF UNITS BY ASSOCIATION

This part of the paper does not purport to be a treatise on foreclosure law in Texas. Nor does it intend to part company with the wealth of CLE materials on the subject on real property foreclosures. Instead, the author hopes to impart some practical experience and considerations that may be of interest to attorneys with little experience in foreclosure of assessment and junior liens.

#### A. Declaration Lien

Most condominium declarations in Texas contain a lien in favor of the condominium association to secure payment of assessments. In most cases, the lien is not sufficiently broad to cover all charges that may be levied against the unit or its owner. For example, the declaration lien may cover the owner's share of common expenses, interest on the debt, and cost of foreclosure. However, the declaration's lien may fail to cover late fees, reimbursements for damage, insurance deductibles, and the other myriad of expenses that may accrue against an owner or his unit.

If the association is preparing to foreclose the lien contained in its declaration, it must carefully distinguish the lienable components of the debt from those that are not lienable. For some associations, and their attorneys, this can be an arduous task because of the way the association keeps its records and applies payments over time.

Texas courts have addressed the nature of the assessment lien created by a recorded declaration. The 2 most significant cases are Inwood North Homeowners Association, Inc., v. Harris, 736 S.W.2d 632 (Texas 1987) and Johnson v. First Southern Properties, Inc., 687 S.W.2d 399 (Tex. App.-Houston [14th Dist.] 1985, *writ ref'd n.r.e.*), both of which deal with homestead claims. Prior to TUCA, condominium associations used these cases to support the validity and enforceability of their assessment liens.

Although TUCA creates a statutory lien, associations are advised to create and maintain assessment liens in their declarations.

#### B. Statutory Lien

1. APPLICABILITY. Thanks to §82.002(c), TUCA's powerful assessment lien provision, §82.113, applies to every condominium in Texas, regardless of when the condominium was created, and regardless of whether the condominium association amends its declaration to come exclusively under TUCA. However, the statutory lien of §82.113 applies only "with respect to events and circumstances occurring on or after January 1, 1994."

2. AMOUNTS SECURED BY LIEN. TUCA creates a statutory assessment lien that, in most cases, will be broader than the lien contained in a pre-TUCA declaration. TUCA's lien provision, §82.113, defines "assessments" for purposes of that one section -- to describe the types of charges that are secured by the association's lien. It covers *any* amount due to the association by the unit owner or levied against the unit owner by the association.

It is worth noting that TUCA's definition of assessment is *not* included in the definitions section of the statute, which would have extended its

application to declarations or bylaws. Instead, the term is defined exclusively for use in §82.113.

The last phrase of the statutory definition of assessments creates a bit of a quandary. The definition of assessments is modified by the closing phrase "unless the declaration provides otherwise." Most pre-TUCA declarations do define "assessment," but not as broadly as TUCA. Typically, "assessment" is defined in a declaration as the owner's pro rata share of common expenses; i.e., the monthly "dues" or periodic special assessments. Does a declaration's narrower definition of assessment preclude use of TUCA's definition?

TUCA prohibits foreclosure of a lien that secures a debt consisting solely of fines. This statutory prohibition in §82.113(e) may limit the foreclosure powers granted under a pre-TUCA declaration. The association may avoid this outcome by applying payments to delinquent fines before regular assessments.

3. **LIENLESS DECLARATION.** The author is familiar with one condominium association for which the declaration fails to create an assessment lien, although the declaration twice refers to a lien it does not create. Similarly situated condominiums may rely on TUCA's assessment lien, with one caveat. The statutory lien does not attach to a unit that, on January 1, 1994, was the homestead of the owner against whom the association seeks to collect. Under subsection (k) of §82.113, the statutory lien attaches when the unit ceases to be the homestead of the January 1, 1994, owner. For most associations it is difficult to determine the homestead status of the units. Associations in this situation, however, may be advised to try to determine the homestead status of the units on January 1, 1994, to the best of their ability. Otherwise, it may be safer to assume that the lien attaches when the ownership changes, a status more easily determined from the public records.

4. **WHEN LIEN ATTACHES.** Subparagraph (c) of §82.113 codifies the Inwood North ruling that the declaration's assessment lien attaches to the unit at the time the declaration is recorded. Because no debt may exist at that time, the assessment lien may be described as a continuing "dry" lien. TUCA acknowledges that some declarations require recording of a lien notice or other step to "perfect" the association's lien. TUCA, however, requires no additional steps to perfect or evidence the association's lien.

### C. Bifurcated Portions of Debt

Because TUCA's lien and foreclosure provisions apply only to events and circumstances occurring on or after January 1, 1994, the collection of a debt that predates 1994 may require the debt to be divided into pre-TUCA and TUCA-era portions. If the condominium does not have the right of nonjudicial foreclosure in its declaration, it may rely on TUCA's power of sale for only those portions of

the debt that arose on or after January 1, 1994. To avoid such an outcome, associations should apply payments received to the oldest debts first. By retiring pre-TUCA portions of the debt, the association is left with a debt that can be foreclosed nonjudicially under TUCA's power of sale. As time marches on, pre-TUCA debts will wane in number and significance. During TUCA's early years, however, attorneys should be alert to the possibility of pre-TUCA debts that may not be subject to the statutory power of nonjudicial foreclosure sale.

### D. Junior Lien Status

Prior to TUCA, the assessment lien contained in a condominium declaration had priority over all subsequently recorded liens unless the declaration contained a subordination clause. Most pre-TUCA declarations expressly subordinate the association's lien to certain categories of liens. Although the first purchase money mortgage is typically subordinated, the priority of other types of liens varies considerably from declaration to declaration.

Subparagraph (b) of §82.113 is a statutory subordination provision. Although in many instances the statutory priorities exceed those found in the declaration, it is advisable to review the subordination provision in the declaration to determine whether the association's lien is superior or subordinate to liens not covered by TUCA.

The public is often unaware that a junior lien may be foreclosed without disturbing senior liens. A unit owner may believe that the association cannot or will not foreclose its assessment lien as long as the owner stays current on his mortgage. He mistakenly thinks that the association will be forced to assume the purchase money mortgage if the association forecloses its lien. Not so.

The association forecloses its lien subject to superior liens. The purchaser of the unit at the association's foreclosure sale acquires all the rights of ownership without becoming personally liable for the prior owner's obligations. Although the foreclosure sale purchaser is not obligated on the outstanding mortgage, he may expect to lose title to the unit when his predecessor-in-title stops paying the mortgage and the mortgagee subsequently forecloses its deed of trust lien. During that interim, however, the foreclosure sale purchaser may occupy the unit, collect rents, and exercise the other privileges of ownership.

Foreclosure of a junior lien does not usually attract prospective purchasers unless the value of the property far exceeds the total debt secured by the property. As a result, the association should expect to be the only or highest bidder at its foreclosure sale.

### E. Notice to Senior Lienors

Echoing Fannie Mae's underwriting guidelines, many pre-TUCA declarations contain provisions

requiring the association to notify certain lienholders if the owner defaults in paying assessments or before the association forecloses its lien. TUCA also contains 3 provisions relating to communications between the association and other lienors:

1. The association *may* notify other lienors about the owner's debt and an impending foreclosure. §82.113(h).
2. The association *must* notify any holder of a recorded or perfected lien who has requested such notification. §82.113(h)
3. The association and other lienors *may* communicate with each other about the owner's debt. §82.113(m)

### F. Exercise of Lien Rights

Under most declarations, the association's assessment lien is not granted to a trustee, as Texans typically do with purchase money mortgages. Instead, most declarations and TUCA grant the assessment lien in favor of the creditor association without creating an intermediary trust instrument and trustee role. Some declarations state that the lien is held by the board of directors. And a few declarations create a trustee to hold the lien.

Although a condominium association usually has a direct right to enforce its lien, without the subterfuge of a trustee, it must determine what person will conduct the foreclosure. Few declarations contain detailed instructions for appointment of a person to exercise the association's lien rights. An occasional declaration refers to the appointee as a "trustee" or "substitute trustee" although no express trust may have been created. Some declaration drafters were obviously trying to wrap familiar concepts and phrases around a type of lien with which they were not familiar.

Most pre-TUCA declarations, however, are silent on who and how to exercise the association's lien rights, other than a general reference to the statutory foreclosure section. In those cases, an appointment of agency, rather than an appointment of trustee, seems to the author better suited for the nature of the lien.

Under a typical deed of trust, the unit owner affirmatively signs a document granting nonjudicial power of sale to a trustee who acts in the direction of the creditor mortgagee. The trustee has legal duties that run to both the mortgagee and the mortgagor. Although most real estate attorneys are familiar with the role of trustee, they may want to consider wearing a different hat when exercising an association's foreclosure powers.

The nature of the association's lien is considerably different from a deed of trust lien. A deed of trust lien is placed on the property when the mortgagor voluntarily signs a paper that grants a private power of sale. In the condominium context,

the unit owner signs no such paper. He creates no express trust. He expressly grants no private power of sale. Instead, by his conduct -- the act of acquiring title to the unit -- he automatically becomes subject to an assessment lien and private power of sale of which he may have only constructive notice.

Unless the declaration specifies who may or must exercise the association's lien rights, §82.113(d) permits the board's appointment of an officer, agent, trustee, or attorney of the association to exercise the association's power of nonjudicial sale. The written resolution may be a separate instrument or a reference in the minutes of a board meeting. In either case, the foreclosing attorney should obtain a copy of the writing by which the board resolves his appointment. The author does not feel it necessary to obtain a separate appointment for each foreclosure action. An appointment designed to continue until terminated may be sufficient.

### G. Preparing for Sale

1. **BID INSTRUCTIONS.** If the foreclosing attorney expects to present the association's bid at the foreclosure sale, he should obtain bidding instructions from the association. The association may be expected to ask for guidance in this matter. Assuming there is a substantial outstanding superior lien, it is customary to suggest a minimum bid of \$100 and a maximum bid of the amount of debt including foreclosure costs.

Typically, the association does not order a foreclosure of its assessment lien unless it is prepared to purchase the unit at its own sale. There may be no other bidders or the only bidders may be casual bystanders who bid a token amount on a whim or with intent to bleed the property in some way. That type of buyer is likely to refuse to pay assessments, thus continuing the drain on the association's coffers.

2. **DUE DILIGENCE.** The due diligence of foreclosing a junior lien varies slightly from that required for a first lien. If you expect the senior lien to be foreclosed in the near future, you do not expect the foreclosure purchaser to be in title for a long time. Therefore you may be inclined to skip a federal tax lien search and notification to IRS. Other elements of your due diligence foreclosure procedures may warrant modification based on the circumstances of the assessment foreclosure.

One step which should not be waived is verification of ownership. It is not uncommon for the association to have incorrect, incomplete, or out of date ownership information. The author advises against relying solely on information provided by the association. It is advisable to obtain a recent title report or comparable search of the real property records for verification of owners and senior lienors.

It is worth noting that TUCA defines "unit owner" as the owner of a unit, and not as "the person

shown on the association's books as the owner." Unlike the mortgagee who pursues the named persons who signed the mortgage note and deed of trust, the association must refer to the public records for confirmation of unit ownership, which periodically changes. A current title report should be considered a prerequisite to initiating foreclosure actions.

Because of the newness and uniqueness of TUCA's right of redemption, the foreclosing attorney should be prepared to educate both his client and the public about its existence. For that reason, the author recommends inserting a disclosure about the right of redemption in the deed into the association and in foreclosure-related communications to the unit owner.

## **H. Conduct of Sale**

The notice, posting, and sale procedures of §51.002 of the Property Code may be used unless the declaration provides additional or more stringent requirements. Some declarations, for example, require the association to publicly record a notice of its assessment lien before initiating a foreclosure action. Or, the declaration may require that certain notices be given to the owner or his mortgagee before foreclosure is initiated. Many declarations, however, direct the association to follow the statutory foreclosure provisions by referring to §51.002 of the Property Code, or its predecessor Article 3810.

## **I. Association as Purchaser**

If the association purchases the unit at its sale, it acquires the rights and liabilities of property ownership. If the association anticipates foreclosure of a senior lien, it expects its ownership tenure to be brief. During that period, however, the association may collect rents or use the unit for its own purposes. The fact that the association acquires title via foreclosure does not relieve the association of a landlord's duties for locks, smoke detectors, and other statutory requirements. If the association subsequently conveys a unit purchased at its foreclosure sale, the association appears to be subject to statutory disclosure requirements for condominium resales.

## **J. Effect of Sale on Debt**

The owner's debt to the association, including cost of the foreclosure sale, is reduced by the amount obtained at the foreclosure sale. The debtor remains personally liable for the balance of the debt, which is no longer secured by the assessment lien. For example, if the pre-foreclosure debt is \$1,500 and the high bid at the foreclosure sale is \$100, the debtor remains liable for the \$1,400 balance, which may be pursued in court. If the association receives more than the amount of its debt at the sale, the excess monies are paid to the owner.

## **K. Right of Redemption**

In exchange for granting a statutory power of nonjudicial sale, TUCA creates a 90-day period during which the foreclosed-on owner can reclaim the unit if both of the following conditions exist: (1) the unit is used for residential purposes, and (2) the association purchases the unit at its own foreclosure sale. Further, TUCA prohibits the association from conveying the unit during the 90-day redemption.

**APPENDIXES****APPENDIX A - DECLARANT SALE MATERIALS**

- A-1 Checklist for preparing CIS
- A-2 Sample CIS
- A-3 Purchaser's receipt of CIS before signing contract
- A-4 Purchaser's receipt of CIS, signed subsequently
- A-5 Purchaser's receipt of amended CIS
- A-6 Purchaser's notice of cancellation of sales contract

**APPENDIX B - FORECLOSURE SALE MATERIALS**

- B-1 TUCA compliance checklist when foreclosing condominium assessment lien
- B-2 Appointment of agent to exercise power of sale
- B-3 Letter to association transmitting appointment of agent
- B-4 Cure letter to owner
  
- B-5 Posting notice
- B-6 Letter to owner transmitting posting notice
- B-7 Deed into association
- B-8 Letter to association transmitting deed into association

**APPENDIX C - RESALE MATERIALS**

- C-1 Date log for condominium unit resale
- C-2 Resale certificate process
- C-3 Seller's request for resale certificate
- C-4 Condominium resale certificate
  
- C-5 Seller's receipt of resale certificate
- C-6 Purchaser's receipt of resale certificate
- C-7 Seller's resale affidavit
- C-8 Waiver of resale certificate
- C-9 Resale contingency for project documents
  
- C-10 Seller's request for project documents
- C-11 Association's certification of project documents
- C-12 Purchaser's receipt of project documents
- C-13 Purchaser's cancellation of resale contract
- C-14 Association's waiver of right of first refusal
  
- C-15 TREC resale contract forms:
  - TREC condominium resale certificate, No. 32-0
  - TREC residential condominium earnest money contract (resale) -- All cash, assumption, third party conventional, or seller financing, No. 30-0
  - TREC residential condominium earnest money contract (resale) -- FHA Insured or VA Guaranteed Financing, No. 31-0

APPENDIX A

DECLARANT SALE MATERIALS

A-1 Checklist for Preparing CIS

A-2 Sample CIS

A-3 Purchaser's receipt of CIS before signing contract

A-4 Purchaser's receipt of CIS, signed subsequently

A-5 Purchaser's receipt of amended CIS

A-6 Purchaser's cancellation of declarant contract

## APPENDIX A-1

**CHECKLIST FOR PREPARING  
CONDOMINIUM INFORMATION STATEMENT**

INFORMATION REQUIRED BY TUCA  
(listed in same order as statutory contents)

**A. INFORMATION REQUIRED FOR ALL CONDOMINIUMS**

1. §82.153(a)(1) - The Declarant. The name and principal address of the declarant.
  - a. Full name of declarant
  - b. Principal address of declarant (also give mailing address if different)
2. §82.153(a)(1) - The Condominium. The name and principal address of the condominium.
  - a. Full name of condominium
  - b. Principal address of condominium (also give mailing address if different)
3. OPTIONAL - The Association. The name and principal address of the association.
  - a. Full name of association
  - b. Principal address of association (also give mailing address if different)
4. §82.153(a)(2) - Description of Condominium. A general description of the condominium that includes the types of units and the maximum number of units.
  - a. Provide a general description of the condominium.
  - b. Describe the types of units.
  - c. State the maximum number of units in the condominium. List the types and numbers of units of each type.
5. §82.153(a)(3) - Number of Units. The minimum and maximum numbers of additional units, if any, that may be included in the condominium are:
  - a. Minimum number of additional units:
  - b. Maximum number of additional units:
6. §82.153(a)(4) - Development Rights. A brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights. Description of development rights:
  - a. Initial number of units:
  - b. Withdrawal of land - description and number of units affected:
  - c. Limited common elements which may be allocated:

- d. Maximum years for creation?
7. §82.153(a)(5) - Condominium Information Statement Instruments. Copies of the following documents are attached:
  - a. Declaration
  - b. Articles of Incorporation
  - c. Bylaws
  - d. Rules of the association
  - e. Copies of leases and contracts that declarant requires purchasers to sign at closing
8. §82.153(a)(6)+(b) - Projected Budget. Attached is a copy of a projected or pro forma budget that complies with the following requirements:
  - a. The budget was prepared in accordance with generally accepted accounting principles. (attach preparer's affidavit)
  - b. The budget was prepared with consideration of the physical condition of the condominium. (attach preparer's affidavit)
  - c. The budget contains a statement of who prepared the budget.
  - d. The budget contains a statement of its assumptions concerning:
    - (1) Occupancy factors
    - (2) Inflation factors
  - e. The budget is based on assumptions that, to the best of declarant's knowledge and belief, are reasonable. (attach declarant's affidavit)
  - f. The budget contains a statement of the amount, or a statement that there is no amount included in the budget as a reserve for repairs and replacement.
  - g. The budget shows the projected monthly common expense assessment for each type of unit.
9. §82.153(a)(7) - Encumbrances. A general description of each lien, lease, or encumbrance on or affecting title to the condominium after conveyance by the declarant.
  - a. Has a title search of the property been performed? If a search has not been performed, does the declarant want drafter to obtain such a search? If a search has been performed, attach a copy of the title report, the abstract, or the title insurance policy, with copies of the encumbrances.
  - b. Attach to the CIS copies of all encumbrances that will not be released prior to closings of individual units.
  - c. Which encumbrances will be released prior to closings of individual units?
  - d. Has the tax assessor agreed to any matters regarding future assessments, e.g., amounts, splitting the assessment among units and billing individual unit owners?
10. §82.153(a)(8) - Warranties. A copy of each written warranty provided by the declarant. Is declarant providing written warranties? If so, describe.

11. §82.153(a)(9) - Suits. 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.
- a. Are there any unsatisfied judgments against the association?
  - b. Are there any pending suits to which the association is a party?
  - c. Are there any pending suits which are material to the land title and construction of the condominium of which a declarant has actual knowledge. (get declarant affidavit)
12. §82.153(a)(10) - Insurance. A description of the insurance coverage provided for the benefit of unit owners.
- a. Casualty insurance:
    - (1) Includes interiors of units?
    - (2) Amount of coverage
    - (3) Name of insurer
    - (4) Name, address, telephone number, and contact at insurance servicer.
    - (5) Deductible - amount and who pays?
  - b. Liability insurance:
    - (1) Amount of coverage (minimum \$1,000,000 required by FNMA).
    - (2) Medical payments of \$\_\_\_\_\_ per person, \$\_\_\_\_\_ per incident
    - (3) Non-owned auto \$\_\_\_\_\_
    - (4) Limit of liability of BI and PD combined \$\_\_\_\_\_
  - c. Fidelity bond coverage.
  - d. Directors' and officers' liability coverage amount \$\_\_\_\_\_, deductible \$\_\_\_\_\_.
  - e. Other insurance, if any.
13. §82.153(a)(11) - Fees. Any current or expected fees or charges to be paid by unit owners for the use of common elements and other facilities related to the condominium.
- a. Rental or cleaning fee for use of clubhouse or recreation facilities?
  - b. Individually metered electricity.
  - c. Individually metered or submetered water?
  - d. Individually metered or submetered gas?
  - e. Separate or user fees for:
    - (1) Cable television
    - (2) Door-to-door trash pick-up
    - (3) Security services
    - (4) Additional parking spaces
    - (5) Rental of storage spaces

14. §82.159 - Outstanding Liens. Are there any liens against the condominium, the foreclosure of which would deprive unit owners of any right of access to or easement of support of the owners' units? If declarant does not intend to release those liens before conveying the subject real property to the association, the CIS must describe the real property that may be conveyed subject to those liens and the amounts of the liens.

**B. ADDITIONAL INFORMATION REQUIRED FOR CONVERSIONS**

1. §82.154(1) - Statement of Current Condition. A statement by the declarant, based on a report prepared by an independent architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building.
- a. Name of engineer or architect.
  - b. Date report ordered and by whom.
  - c. If report not yet ordered, who is to order it.
  - d. Date of declarant's statement.
2. §82.154(2) - Statement of Useful Life. A statement by the declarant of the useful life of each item reported on in the Statement of Current Condition, or a statement that no representations are made in this regard.
- a. Declarant prefers to make no representations.
  - b. Date of construction or installation of each item to be considered.
  - c. Date and remaining useful life of each item.
  - d. Date of major repair of each item.
  - e. Extended useful life of each item.
3. §82.154(3) - Statement of Violations. A list of outstanding notices of uncured violations of building code or other governmental regulations, together with the estimated cost of curing those violations.
- a. Date on which declarant was asked about outstanding violations.
  - b. Notice of violations of codes.
  - c. Estimated cost to cure each violation.

## APPENDIX A-2

**SAMPLE**  
CONDOMINIUM INFORMATION STATEMENT  
DILLO HEIGHTS

**PURCHASER, READ THIS DOCUMENT FOR YOUR OWN PROTECTION.  
IT CONTAINS INFORMATION REQUIRED BY STATUTE FOR ALL  
TEXAS CONDOMINIUMS CREATED AFTER JANUARY 1, 1994.**

**NAME OF CONDOMINIUM:** Dillo Heights

**LOCATION OF CONDOMINIUM:** 23 Willie Trail  
Shafter, Texas 79850

**NAME OF DECLARANT:** Dillo Heights Joint Venture

**ADDRESS OF DECLARANT:** c/o Chisos Construction, Inc.  
General Delivery  
Study Butte, Texas 79852

**EFFECTIVE DATE OF CONDOMINIUM INFORMATION STATEMENT:** January 1, 1994

This Condominium Information Statement presents certain information regarding the condominium development and the units being offered for sale by the declarant. It consists of two parts, a narrative portion and an exhibits portion. The exhibits include legal documents that are required for the creation and operation of the condominium. The exhibits will control any inconsistency between the exhibits and the narrative. The declarant's representatives are prohibited from changing or attempting to interpret any of the terms and conditions of this Condominium Information Statement.

The Condominium Information Statement is not intended to be all inclusive or to address every significant feature of the condominium. Because purchasing real property is an important decision, the purchaser is encouraged to review this Condominium Information Statement with an attorney and to consult other sources for information not covered by the Condominium Information Statement.

Under limited circumstances, a purchaser has a five-day period after receiving the Condominium Information Statement during which the purchaser may cancel the contract of sale and obtain full refund of any money deposited in connection with the contract. This right to cancel does not apply if the purchaser received the Condominium Information Statement before signing the contract or if the contract contains an underlined or bold-print provision acknowledging the purchaser's receipt of the Condominium Information Statement and recommending that the purchaser read the Condominium Information Statement before signing the contract. If the purchaser elects to cancel, notice of cancellation must be given pursuant to Section 82.156 of the Texas Uniform Condominium Act.

**SAMPLE****DILLO HEIGHTS  
CONDOMINIUM INFORMATION STATEMENT**TABLE OF CONTENTS

I.	Narrative Portion	<u>Page</u>
	Names & Addresses	
	Description of the Condominium	
	Additional Units, if any	
	Development Rights	
	Governing Documents	
	Budget	
	Encumbrances	
	Warranty	
	Judgments & Suits	
	Insurance	
	Fees	
	General Information	
II.	Exhibits Portion	<u>Tab</u>
	Declaration (with exhibits) [Proposed, to be recorded]	Exhibit A
	Articles of Incorporation [Proposed, to be filed]	Exhibit B
	Bylaws [Proposed]	Exhibit C
	Rules [Proposed]	Exhibit D
	Purchaser's Affidavit	Exhibit E
	Projected Budgets	Exhibit F

## SAMPLE

DILLO HEIGHTS  
CONDOMINIUM INFORMATION STATEMENT1. NAMES & ADDRESSES [TUCA §82.153(a)(1)]

## a. DECLARANT:

(1) NAME: Dillo Heights Joint Venture

(2) PRINCIPAL ADDRESS:

c/o Chisos Construction, Inc.  
General Delivery  
Study Butte, Texas 79852

## b. CONDOMINIUM PROJECT:

(1) NAME: Dillo Heights

(2) PRINCIPAL ADDRESS:

(a) Physical location address:

23 Willie Trail  
Shafter, Texas 79850

(b) Mailing and Manager's address:

c/o Giant Condo Management Co.  
3-D James Dean Blvd.  
Marfa, Texas 798432. DESCRIPTION OF CONDOMINIUM PROJECT [TUCA §82.153(a)(2)]

## a. GENERAL DESCRIPTION OF THE CONDOMINIUM:

Dillo Heights is located on approximately four lechuga-covered acres of land at the southwest corner of the intersection of Willie and Waylon Trails in Shafter, Texas. The first phase consists of six residential buildings containing 24 units, attached and detached garages, attached and detached carports, a swimming pool, a cabana room, and a satellite dish. A second phase may be built containing up to six residential buildings with up to 24 units, attached and detached garages, attached and detached carports, and a cow chip tossing court.

The residential buildings will be "early Lajitas" in style, and one to three stories in height. Exteriors will be 80 percent masonry, with combinations of stucco, adobe brick, and wood siding. Sloped portions of the roof will be shingled with clay tiles. Flat portions of the roof will consist of tar and gravel over a porous membrane.

The recreation amenities will consist of a Clay Henry-shaped swimming pool, the adjoining deck, and a poolside cabana, the use of which will be determined by the residents. During the Declarant Control Period, the cabana will be used by the Declarant as a construction office. The amenities may also include an unpaved cow chip tossing court which NEED NOT BE BUILT by the Declarant.

b. DESCRIPTION OF TYPES OF UNITS:

As of the date of this statement, the Declarant anticipates four basic floorplans:

The Jeff Davis - a two bedroom-two bath flat with approximately 1,200 sq.ft.

The Presidio - a two-story townhouse with two bedrooms and two and a half bathrooms, having approximately 1,300 sq.ft.

The Pecos - a three-story townhouse with two bedrooms, an electronic gadget study, and two and a half bathrooms, having approximately 1,500 sq. ft.

The Brewster - a two story townhouse with three bedrooms, an exercise equipment room, and three bathrooms, having approximately 1,700 sq.ft.

The Declarant discloses that he reserves the right in the Declaration to change the numbers, sizes, and types of units, including the right to combine and subdivide units.

c. MAXIMUM NUMBER OF UNITS:

Dillo Heights, as described in the attached Declaration, contains 24 units. The Declarant discloses that he reserves the right in the Declaration to change the numbers, sizes, and types of units, including the right to combine and subdivide units.

3. ADDITIONAL UNITS, IF ANY [TUCA §82.153(a)(3)]

The Declarant reserves the right in the Declaration to create up to 24 additional units, which NEED NOT BE BUILT.

4. DEVELOPMENT RIGHTS [TUCA §82.153(a)(4)]

Declarant has created 24 units and reserved the right to create up to 24 additional units, common elements, and limited common elements, in the location shown on the Plats and Plans as "NEED NOT BE BUILT." Declarant has also reserved the right to assign to particular units the parking spaces shown on the Plat as limited common elements. The quality and style of construction of all buildings and improvements will be compatible with the buildings and improvements constructed in the first phase.

Declarant makes no assurances regarding the portions of the areas shown as "NEED NOT BE BUILT" as to where or in which order declarant will exercise its development rights. Declarant's exercise of development rights in some portions will not obligate it to exercise them in other portions.

Declarant has reserved the right to construct improvements in, on, over, and under the land designated "MUST BE BUILT" on the Plat for the purpose of furnishing utility and other services to buildings and improvements to be constructed on the land designated "NEED NOT BE BUILT" on the Plat. Declarant also reserves the right to grant easements to public utility companies and to convey improvements within those easements anywhere in the condominium for the above-mentioned purposes.

The development rights may be executed at any time, but not more than five years after recording of the declaration. Declarant may terminate some or all of the development rights prior to the five-year expiration date by a recorded instrument.

5. DOCUMENTS [TUCA §82.153(a)(5)]

Unless otherwise noted, the following documents are attached to this statement and incorporated by reference:

a. Declaration.

The Condominium Declaration for Dillo Heights is attached as Exhibit A.

b. Articles of Incorporation.

The Articles of Incorporation of Dillo Heights Owners Association, Inc., are attached as Exhibit B.

c. Bylaws.

The Bylaws of Dillo Heights Owners Association, Inc., are attached as Exhibit C.

d. Rules.

The Rules of Dillo Heights Owners Association, Inc., are attached as Exhibit D. These are the initial rules of the Association, to be adopted at the organizational meeting of the Association.

e. Leases and contracts, other than loan documents, that are required by the declarant to be signed by purchasers at closing.

There are no leases or contracts to be executed by the purchaser at closing. The declarant does require the purchaser to sign an affidavit at closing. The purpose of the affidavit is to induce lenders to make mortgage loans on units, to induce title insurance companies to issue policies with respect to the units, and to affirm purchasers' understanding of the nature and condition of the property they are purchasing. A form of the purchaser's affidavit is attached as Exhibit E.

6. PROJECTED OR PRO FORMA BUDGET [TUCA §82.153(a)(6)]

a. Budget. The projected budget for the first fiscal year of the Association following the date of the first conveyance to a purchaser is attached as Exhibit F.

b. Preparer. The budgets were prepared for the Declarant by Will E. Coyote, Giant Condo Management Co., 3-D James Dean Blvd., Marfa, Texas 79843.

c. Assumptions About Occupancy. The projected budget is based on the assumption that all 24 units declared in the first phase are occupied for all or most of the budget year. That projected budget is attached as Exhibit F-1. It is possible that the Declarant may add an additional 24 units, together with their limited common elements, or the cow chip tossing court, or both, during the fiscal year following the first conveyance to a purchaser. For this reason, the Declarant has attached, as Exhibits F-2 and F-3, two other projected budget based on the varying assumptions about the numbers of units and amenities that are added and occupied during the budget year.

d. Assumptions About Inflation. All budgets are based on a 100 percent net collection rate and the estimates are in current dollars unadjusted for possible inflation.

7. LIENS, LEASES, OR ENCUMBRANCES [TUCA §82.153(a)(7)]

Title to the condominium and each unit is subject to the following:

a. Thirty-foot utility easement as shown on plat recorded in Volume 784, Page 14, Map Records, Presidio County, Texas.

b. Access easement to Sotol Mining Company, recorded in Volume 522, Page 253, Real Property Records, Presidio County, Texas.

c. Deed of Trust granted by Dillo Heights Joint Venture, recorded in Volume 811, Page 196, Real Property Records, Presidio County, Texas, to secure a note in the original principal amount of \$1 million payable to Alpine Savings & Loan.

d. The terms and provisions of that certain satellite television service agreement evidenced by a Memorandum of Agreement and Easement, dated January 1, 1994, and recorded in Volume 811, Page 276, Real Property Records, Presidio County, Texas.

e. Taxes, including any reassessment or reallocation from the creation of the condominium, which become due and payable after the date of conveyance of the unit.

8. WRITTEN WARRANTY [TUCA §82.153(a)(8)]

The following written warranty is attached to this statement and incorporated by reference: None. The Declarant provides no written warranty to the purchaser.

9. UNSATISFIED JUDGMENTS OR PENDING SUITS [TUCA §82.153(a)(9)]

Declarant has actual knowledge of the following unsatisfied judgments against the Association and the following pending suits to which the Association is a party, or which are material to the land title and construction of the condominium:

- a. Unsatisfied judgments against the Association: None.
- b. Pending suits to which the Association is a party: None.
- c. Pending suits which are material to the land title and construction of the condominium: Sotol Mining Co. v. Dillo Heights Joint Venture, Case No. 93-1003, 1st Judicial District, Presidio County, Texas. This case involves the nature of Sotol Mining's access easement across the condominium. The court has ordered mediation before setting the case for trial.

10. INSURANCE COVERAGE provided for the benefit of unit owners [TUCA §82.153(a)(10)]

The Declarant, for the benefit of the Association, will obtain a master insurance policy from Shafter Insurance Company. The effective date of the coverage will be upon declaration and will expire three years after its effective date. The following information was provided by \_\_\_ of Shafter Insurance Company, who may be reached at (905) XXX-XXXX.

- a. **PROPERTY EXPOSURE TO LOSS:** The policy is written on a blanket broad form covered causes of loss basis with agreed amount and full insurable replacement cost coverages less the applicable deductible. Total coverage for all buildings will be equal to 100% of their insurable replacement value.
- b. **LIABILITY EXPOSURE TO LOSS:**
  - (1) **Commercial General Liability.**
    - (a) Bodily Injury and Property Damage Liability--\$\_\_\_\_\_ combined single limit per occurrence.
    - (b) Personal Injury Liability & Advertising Injury Liability.
    - (c) Fire Damage Legal Liability.
    - (d) Medical Payment--\$\_\_\_\_\_ per person; \$\_\_\_\_\_ per accident.

(e) Nonowned Auto--\$\_\_\_\_\_ single limit.

This policy contains an aggregate limit of liability of \$\_\_\_\_\_ bodily injury and property damage combined, covering the common property.

We are not providing liability coverage for accidents or occurrences that occur within that portion of the premises which is reserved for an owner's exclusive use and occupancy.

(2) Directors and Officers Liability. \$\_\_\_\_\_ with a \$\_\_\_\_\_ deductible per occurrence.

c. FIDELITY COVERAGE: \$\_\_\_\_\_ Employee Dishonesty.

d. INCOME EXPOSURE TO LOSS:

(1) Business Income Insurance.

(2) Assessment Fees Receivable Insurance. Lost assessments because of a covered loss to the Property.

e. PERSONNEL EXPOSURE TO LOSS:

(1) Workers Compensation Employers Liability Insurance.

f. ADDITIONAL AREAS NOT COVERED: Because of the exclusions in the master policy, you should consult with your own agent about purchasing a policy to cover the following exposures:

(1) Value of household and personal property.

(2) Additional living expense.

(3) Personal injury.

(4) Loss assessment coverage.

(5) Value of jewelry, furs, silverware, fine art.

(6) Business interruptions.

(7) Value of betterments and improvements made or acquired at the expense of an individual unit owner.

Should a situation occur where you would like to present a claim under the master policy, or if you have any questions regarding your insurance coverage, please feel free to contact us.

#### 11. FEES OR CHARGES FOR USE OF COMMON ELEMENTS [TUCA §82.153(a)(11)]

The Association's board of directors has the authority to impose charges for the use, rental, or operation of common recreational facilities, in accordance with Section \_\_\_ of the Declaration. The initial Rules of the Association permit any resident to reserve the poolside cabana, subject to certain restrictions, upon payment of a \$50.00 refundable cleaning fee.

#### 12. GENERAL INFORMATION [Not required by TUCA]

The exhibits which follow this narrative portion provide a more detailed description of the condominium and the rights and obligations of the unit owner. The purchaser should carefully consider the exhibits, as well as this narrative portion of the Condominium Information Statement. If the purchaser does not understand any aspect of this Condominium Information Statement, the sales contract, and any other materials provided in connection with the sale of units, the purchaser should obtain competent legal counsel.

The declarant reserves the right to amend, in writing, the terms of this Condominium Information Statement. If the change may adversely affect a purchaser under contract who has received a Condominium Information Statement but who has not yet closed, the declarant shall furnish a copy of the amendment to that purchaser before closing. This Condominium Information Statement may not be changed or modified orally.

Dated: January 1, 1994

DILLO HEIGHTS JOINT VENTURE

BY: CHISOS CONSTRUCTION, INC., managing  
venturer

By: \_\_\_\_\_  
Red Redford, President

APPENDIX A-3

PURCHASER'S RECEIPT OF  
CONDOMINIUM INFORMATION STATEMENT

ADDENDUM TO CONTRACT OF SALE

<PROJECT NAME>

UNIT \_\_\_\_\_

**I, THE UNDERSIGNED PURCHASER, HEREBY ACKNOWLEDGE THAT ON THE DATE SHOWN BELOW I RECEIVED THE CONDOMINIUM INFORMATION STATEMENT FOR <PROJECT NAME>.**

**I UNDERSTAND IT IS RECOMMENDED THAT I READ THE CONDOMINIUM INFORMATION STATEMENT BEFORE EXECUTING THE CONTRACT OF SALE.**

**PURCHASER 1:**

Date I received Condominium Information Statement:

\_\_\_\_\_

Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**PURCHASER 2:**

Date I received Condominium Information Statement:

\_\_\_\_\_

Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

APPENDIX A-4

PURCHASER'S RECEIPT OF  
CONDOMINIUM INFORMATION STATEMENT

<PROJECT NAME>

**PURCHASER:** <Purchaser Name>  
**SELLER:** <Declarant Name>  
**CONDOMINIUM:** <Project Name>, <Project City>, <Project County> County, Texas  
**UNIT:** <Unit Legal Description - Short>  
**CONTRACT OF SALE DATE:** <Unit Contract Date>

BY SIGNING AND INITIALING BELOW, I, the above-named Purchaser, certify to the following:

1. I signed the Contract of Sale to purchase the Unit located in the Condominium, as each is described above.

2. [Initial the appropriate selection]

\_\_\_\_\_ I received a Condominium Information Statement from the Seller before I signed the Contract of Sale.

\_\_\_\_\_ The Contract of Sale contained an underlined or bold-print provision acknowledging my receipt of the Condominium Information Statement and recommending that I read the Condominium Information Statement before executing the Contract of Sale.

\_\_\_\_\_ During the 5-day period after I received the Condominium Information Statement, I took no steps to cancel the Contract of Sale nor did I signify to the Seller my wish to cancel the Contract of Sale, the terms of which remain in effect.

3. Even though I may have seen or been shown a furnished model, a condominium unit maintained by the Seller as a sales office, or a "typical unit" which has been newly decorated, I have received no promise or representation from the Seller or any of its representatives that I will receive as part of my purchase any such decorations or furnishing, except as completed in the Unit I purchase.

4. I am purchasing the Unit for my own personal use, for residential purposes, and, in purchasing the Unit, I have not sought out, nor am I relying upon, the skill or judgment of the Seller nor its representatives in advising me as to the suitability of the Unit for any particular commercial use or other purpose for which I am purchasing it.

5. I  am  am not purchasing the Unit for my own occupancy. If the Unit is for my own occupancy, it will be my  primary  secondary home.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ 199\_\_\_\_\_.

\_\_\_\_\_  
<Purchaser Name>

APPENDIX A-5

PURCHASER'S RECEIPT OF  
CONDOMINIUM INFORMATION STATEMENT

<PROJECT NAME>

UNIT \_\_\_\_\_

BY SIGNING BELOW, I, the undersigned purchaser, certify that on the \_\_\_\_ day of \_\_\_\_\_ 199\_\_\_\_, I received a copy of the Condominium Information Statement for <Project Name>, located in <Project City>, <Project County> County, Texas. The Condominium Information Statement I received is dated <CIS First Date>, with revisions or amendments through \_\_\_\_\_, 199\_\_\_\_.

Date Signed: \_\_\_\_\_

PURCHASER:

\_\_\_\_\_

APPENDIX A-6

PURCHASER'S CANCELLATION OF DECLARANT CONTRACT  
As permitted by TUCA §82.156(b)+(c)

NAME OF CONDOMINIUM PROJECT: \_\_\_\_\_

UNIT NO. OR ADDRESS: \_\_\_\_\_

NAME OF DECLARANT/SELLER: \_\_\_\_\_

NAME OF UNIT PURCHASER: \_\_\_\_\_

BY SIGNING BELOW, I certify that:

1. I am the purchaser under contract to buy the above-referenced condominium unit from the above-named declarant.
2. [Initial the appropriate selection]

\_\_\_\_\_ The contract of sale I signed does not contain an underlined or bold-print provision acknowledging my receipt of the Condominium Information Statement and recommending that I read the Condominium Information Statement before signing the contract of sale.

\_\_\_\_\_ I did not receive a Condominium Information Statement from the Seller before I signed the contract of sale.

\_\_\_\_\_ I am signing and delivering this notice of cancellation within 5 days after I received the Condominium Information Statement.

3. As permitted by TUCA §82.156, I do hereby cancel my contract to purchase the above-described unit by giving this notice to the declarant at the following address, by the following method, on the date signed below:

Delivered to Declarant at this address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Delivered to Declarant by:  Personal delivery  
 Certified mail return receipt requested

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ 199\_\_\_\_.

\_\_\_\_\_  
Purchaser's Signature

## APPENDIX B

FORECLOSURE SALE MATERIALS

- B-1 TUCA compliance checklist when foreclosing condominium assessment lien
- B-2 Appointment of agent to exercise power of sale
- B-3 Letter to association transmitting appointment of agent
- B-4 Cure letter to owner
- B-5 Notice of Foreclosure Sale
- B-6 Letter to owner transmitting posting notice
- B-7 Deed into association
- B-8 Letter to association transmitting deed into association

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NOT INCLUDED:

- Notice to owner of right of redemption
- Redemption deed
- Redemption affidavit
- Mortgagee's request for notification
- Deed in lieu of foreclosure

## APPENDIX B-1

TUCA COMPLIANCE CHECKLIST  
WHEN FORECLOSING  
CONDOMINIUM ASSESSMENT LIEN

## STEP

1 **Assessment Lien.** Does the declaration create a lien against the unit?

If yes, proceed.

If no, on January 1, 1994, was the unit the homestead of the current owner? TUCA §82.113(k)

If yes, STOP -- TUCA's statutory lien has not attached to the unit. Go to court.

If no, TUCA's statutory lien does attach. Proceed.

STEP 2 **Power of Sale.** Does the declaration expressly permit nonjudicial foreclosure?

If yes, proceed.

If no, you may rely on the statutory private power of sale in TUCA §82.113(d). Proceed.

STEP 3 **Fines.** Does the debt consist solely of fines?

If yes, STOP -- nonjudicial foreclosure is prohibited by TUCA §82.113(e).

If no, proceed.

STEP 4 **Pre-TUCA Debt.** Does the debt consist of portions that arose prior to January 1, 1994?

If yes, that portion of the debt may not be foreclosed nonjudicially unless the declaration contains a private power of sale.

If no, the entire debt is subject to TUCA. Proceed.

STEP 5 **Notice to Other Lienors.** Has the association received a written request for notification from the holder of another lien against the unit? Does the declaration require the association to notify other lienholders before initiating foreclosure?

If yes, give those notices before proceeding. TUCA §82.113(h)

If no, proceed.

STEP 6 **Notice of Lien.** Does the declaration require certain notices (such as recording a lien notice) or procedures before initiating foreclosure?

If yes, perform those requirements before proceeding. TUCA §82.113(c)+(d)

If no, proceed.

STEP 7 **Appointment.** Does the declaration specify who may exercise the Association's right of nonjudicial foreclosure?

If yes, follow those requirements before proceeding.

If no, it is advisable to obtain written resolution of appointment as permitted by TUCA §82.113(d) before proceeding.

STEP 8 **Additional Requirements.** Does the declaration modify the requirements of Property Code §51.002 for exercising a private power of sale?

If yes, TUCA §82.113(d) requires compliance with declaration provisions that are more stringent than §51.002.

If no, follow the requirements of §51.002.

STEP 8 **Back to Basics.** Follow customary due diligence procedures for nonjudicial foreclosure.



## APPENDIX B-3

LETTER TO ASSOCIATION  
TRANSMITTING APPOINTMENT OF AGENT

&lt;Date&gt;

&lt;Client name &amp; address&gt;

Re: Appointment of agent to exercise condominium association's private power of sale to nonjudicially foreclose its assessment lien

Dear &lt;Salutation&gt;:

<Assn. Name> (the "**Association**") has instructed this firm to foreclose the Association's assessment lien against one or more of the units. Because this is our initial foreclosure action on behalf of the Association, this firm customarily requires a one-time written board resolution that authorizes this firm to act as the Association's agent in foreclosure proceedings. Such an appointment is permitted by Section 82.113(d) of the Texas Uniform Condominium Act.

I have enclosed the original Appointment of Agent naming <Agent Name> to exercise the Association's power of sale. I prepared the Appointment of Agent for signature by the Association's president. If it meets with the board's approval, it should be signed and acknowledged by the president.

Please return to me the enclosed Appointment of Agent with original signature and acknowledgment. Original signatures are required to publicly record the instrument. If we record the instrument, I will send you a copy of the recorded instrument when it is returned by the county clerk.

Again, this Appointment of Agent is generally a one-time event to be used as the authority for all nonjudicial foreclosures conducted by this firm on behalf of the Association. Please call if you have questions.

Sincerely,

Enclosure

## APPENDIX B-4

**§51.002 CURE LETTER  
TO OWNER OF CONDOMINIUM UNIT**

*[for use when declaration does not have express private power of sale  
and when portions of the debt arose before 1/1/94]*

<Cure Letter Date>

CERTIFIED MAIL #  
RETURN RECEIPT REQUESTED

<Owner Name>  
<Owner Address>

Re: Notice of default, demand to cure, and notice of intent to foreclose lien secured by Unit  
<Unit #>, Bldg. <Bldg. #>, <Project Name>, located at <Unit Address> (the "**Property**")

Dear <Owner Salutation>:

This law firm represents <Assn. Name> (the "**Association**") in connection with your debt for assessments and other charges relating to your ownership of the Property. Because you did not respond to my demand letter dated <Demand Letter Date>, the Association has instructed me to give you this final notice, as required by Section 51.002 of the Texas Property Code, as a prerequisite to foreclosing the Association's lien for assessments.

You are hereby given notice that you are in default of your obligations to pay assessments and other charges to the Association, as required by Article <Lien Article> of the <Declaration Name>, recorded on <Declaration Recording Date>, in Volume <Volume #>, Page <Page #>, Real Property Records of <Project County> County, Texas, as amended. Demand is hereby made upon you for immediate payment of the total amount due, <Total Owed> as of <Calculation Date>, as described in the enclosure.

Your deadline for payment is 5:00 p.m. on <Payment Deadline Date -- at least 20 days>. After that time, without further demand, the Association may post a public notice of its foreclosure sale of the Property. Because the portion of your debt that arose before January 1, 1994, is not subject to the statutory power of nonjudicial foreclosure granted to the Association by Section 82.113 of the Texas Property Code, only those charges that became due and payable on or after January 1, 1994, are the subject of the nonjudicial foreclosure sale. Nevertheless, you remain personally liable for the entire debt, which the Association may, at its option, foreclose judicially pursuant to the Declaration.

To cure your default, pay the total amount due, plus charges accruing from that date to the date of your payment. Payment must be made in cash or by cashier's check, payable to <Assn. Name>, and delivered to my offices at the address above by 5:00 p.m. on <Payment Deadline Date -- at least 20 days>.

<Owner Name>  
<Cure Letter Date>  
Page 2

I urge you to consult a lawyer about the legal and practical consequences of ignoring this demand. Your attorney will explain to you that the Association has the right to foreclose its lien and take the Property away from you, even though you may be current on your mortgage. In other words, if the Association forecloses its assessment lien against the Property, you will no longer own it. You may, however, continue to be obligated on your mortgage, and you will remain liable to the Association for any deficiency in your debt.

If you have any questions about this letter, please call me or have your attorney call me. Although I am inviting you to call me, please be advised that the Association will charge your account for any additional legal services it incurs in relation to your debt, including conversations you or your attorney may have with me.

Your prompt response to this notice would be appreciated.

Sincerely,

Enclosure

cc: (w/enclosure)

<Owner Name>  
(by first class mail)

<Assn. Manager Name>

<Assn. President Name>

**CONSUMER DEBT NOTICE**

*This notice is being given in the event your debt may be characterized as "consumer" debt pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et. seq.*

In connection with the enclosed letter, you are hereby notified of the following:

The amount of the debt and the name of the creditor are set forth in the enclosed letter. Unless you dispute the validity of this debt, or any portion of it, within 30 days after receiving this notice, I will assume the debt to be valid.

If, within that 30 day period, you notify me in writing that you dispute all or any part of the debt, I will obtain and mail to you verification of the debt. If the debt is founded on a judgment, a copy of the judgment will be mailed to you as verification. If the original creditor is different from the current creditor, then upon your written request within 30 days of the receipt of this notice, we will provide you with the name and address of the original creditor.

This 30 day period does not alter or waive the deadline for payment set forth in the enclosed letter. You have the right to bring a court action if you claim you are not in default, or if you believe that you have any other defense to this demand for payment. We are attempting to collect a debt and any information obtained will be used for that purpose.

---

**SAMPLE  
DESCRIPTION OF DEBT**

According to figures supplied by the Association, through its managing agent, as of <Calculation Date>, you owe the Association a total of \$<Total Debt>, of which **\$<Foreclosure Debt> was levied on or after January 1, 1994**, and is subject to nonjudicial foreclosure, as follows:

\$\_\_\_ for regular monthly assessments of \$\_\_\_ each for the months of \_\_\_ through \_\_\_. **Of this amount, \$\_\_\_ is subject to nonjudicial foreclosure.**

\$\_\_\_ for the unpaid balance of the 1993 special assessment. This amount is not subject to nonjudicial foreclosure.

\$\_\_\_ for a 1990 repair charge. This amount is not subject to nonjudicial foreclosure.

\$\_\_\_ for total accrued interest of \_\_\_ percent per annum through <Calculation Date>. **Of this amount, \$\_\_\_ is subject to nonjudicial foreclosure.**

\$\_\_\_ for attorney's fees and collection costs incurred to date. **Of this amount, \$\_\_\_ is subject to nonjudicial foreclosure.**

Please be advised that your debt continues to accrue interest, collection costs, and legal fees, as well as monthly assessments.

---

<ASSN. NAME>

Address: <Unit Address>

Owner: <Owner Name>



## APPENDIX B-6

LETTER TO OWNER  
TRANSMITTING POSTING NOTICE

*[for use when declaration does not have express private power of sale  
and when portions of the debt arose before 1/1/94]*

<Posting Date>

CERTIFIED MAIL #  
RETURN RECEIPT REQUESTED

<Owner Name>  
<Owner Address>

Re: NOTICE OF FORECLOSURE SALE BY CONDOMINIUM ASSOCIATION  
USING TUCA'S STATUTORY POWER OF NONJUDICIAL SALE  
Sale Date: Tuesday, <Sale Date>  
Property to be Sold: Unit <Unit #>, Bldg. <Bldg. #>, <Project Name>, located at  
<Unit Address>

Dear <Owner Salutation>:

I have enclosed the Notice of Foreclosure Sale that is being posted on the public notice board of the courthouse for <Project County> County, Texas. You are informed that the public auction of the property described in the Notice is scheduled for Tuesday, <Sale Date>, at the <Project County> County courthouse. The sale will start not earlier than <Sale Start Time>, and may start within three hours after that time.

This firm has been retained by <Assn. Name> (the "**Association**") to collect the debt relating to the Property. As the Association's agent, this firm has been authorized to conduct a foreclosure sale of the Property.

This letter is addressed to you because you are shown on the Association's records as the current owner of the Property. Your Property is subject to the assessment lien contained in <Lien Article> of <Declaration Name>, recorded on <Declaration Recording Date>, in Volume <Volume #>, Page <Page #>, Real Property Records, <Project County> County, Texas, as amended (the "**Declaration**"). Being a condominium unit, the Property is also subject to the assessment and lien provisions in Section 82.113 of the Texas Uniform Condominium Act ("**TUCA**").

The portions of your debt to the Association that arose before January 1, 1994, are not subject to the statutory power of nonjudicial foreclosure contained in Section 82.113 of TUCA. You may prevent this foreclosure at public auction by paying the assessments and charges that were levied by the Association on or after January 1, 1994. However, you remain liable for the pre-1994 portions of your debt, for which the Association has certain rights and remedies, including judicial foreclosure.

<Owner Name>  
<Posting Date>  
Page 2

To stop the sale, your payment must be in the form of a cashier's check or other cash equivalent and delivered to my office at the address shown on the letterhead before the time of the sale. Payments delivered to the Association's manager and payments made by personal or business check may not be processed in time to stop the foreclosure sale. To obtain updated information about your debt, please contact the Association's manager, <Assn. Manager Name>, <Assn. Management Firm Name>, <Assn. Management Firm Address>, telephone <Assn. Manager Phone>.

If you do not stop the sale, you will be liable for any deficiency resulting from the foreclosure sale proceeds being less than the amount you owe to the Association for the debt that has accrued since January 1, 1994. You will also remain liable for any outstanding assessments and charges that accrued prior to 1994.

If the Association purchases the Property at this foreclosure sale, and if the Property is used for residential purposes, then the foreclosed owner has 90 days from the date of the sale to "redeem" or repurchase the Property from the Association. To redeem, you must comply with Section 82.113(g) of TUCA.

If you have any questions, please do not hesitate to contact me or have your attorney contact me.

Sincerely,

Enclosure

cc: (w/enclosure)  
<Owner Name> (by regular mail)  
<Assn. Manager Name>  
<Assn. President Name>

## APPENDIX B-7

**AGENT'S DEED  
FOLLOWING FORECLOSURE OF ASSESSMENT LIEN**

**DATE:** <Sale Date>

**GRANTOR/ASSOCIATION:** <Assn. Name>, acting through its agent, <AGENT NAME>

**GRANTOR'S MAILING ADDRESS:**

**GRANTEE:** <Assn. Name>

**GRANTEE'S MAILING ADDRESS:**

**CONSIDERATION:** \_\_\_\_\_

**I. RECITALS**

B. On or about <Purchase Date>, <Owner Name> (the "**Owner**") acquired certain real property located at <Unit Address>, and further described below (the "**Property**").

C. The Property is subject to that certain <Declaration Name>, recorded on <Declaration Recording Date>, in Volume <Volume #>, Page <Page #>, Real Property Records of <Project County> County, Texas, as amended (the "**Declaration**"), which provides for a lien against the Property, in favor of <Assn. Name> (the "**Association**") to secure Owner's obligation for payment of assessments and other charges levied by the Association.

D. Being a condominium unit, the Property is also subject to certain sections of Chapter 82 of the Texas Property Code -- the Uniform Condominium Act ("**TUCA**"). Section 82.113 of TUCA creates a private power of sale in favor of the Association for assessments levied against the Property or the Owner on or after January 1, 1994.

E. Owner defaulted in Owner's obligations to pay assessments to the Association, as required by the Declaration. Some if not all of the debt consists of assessments levied on or after January 1, 1994. By letter dated <Cure Letter Date>, the Association made demand for payment on Owner, and offered an opportunity of at least 20 days to cure the default.

F. When Owner failed to cure the default, the Association directed <Agent Name>, as agent of the Association, to exercise the Association's lien rights regarding that part of the debt levied on or after January 1, 1994, and to offer the Property for sale as provided in TUCA.

G. On <Posting Date>, that being at least 21 days preceding the date of sale, <Agent Name>, served or caused to be served notice of a foreclosure sale:

1. By certified mail on each debtor obligated to pay the indebtedness according to the records of the Association;
2. By posting the notice of foreclosure sale on the designated board in the courthouse of <Project County> County, Texas; and
3. By filing the notice of foreclosure sale with the county clerk.

H. On <Sale Date>, that being the first Tuesday of the month, between the hours of <Sale Start Time> and three hours later, <Agent Name> offered the Property for sale at public auction at the door of the courthouse of <Project County> County, Texas, to the highest bidder, for cash. The Property was sold to the above named Grantee -- being the highest or only bidder -- for the Consideration described above.

I. All prerequisites required by law and/or by the Declaration have been duly satisfied by the Association and its agent, <Agent Name>.

II. CONVEYANCE

I, <Agent Name>, by virtue of the power and authority vested in <Agent Name> as agent of the Association, for and in consideration of the Consideration, to be credited against that portion of Owner's debt that arose on or after January 1, 1994, do **GRANT, SELL, AND CONVEY** to Grantee the property located at <Unit Address>, and more particularly described as: (the "**Property**")

Unit <Unit #>, Bldg. <Bldg. #>, <Project Name>, a condominium regime located in the City of <Project City>, and the interests appurtenant thereto according to the <Declaration Name> recorded on <Declaration Recording Date>, in Volume <Volume #>, Page <Page #>, Real Property Records of <Project County> County, Texas, as amended <itemize the recording data for amendments>.

With respect to all personalty, fixtures, and other personal property and collateral included in the Property, this document may be construed as a **Bill of Sale** to completely convey all of Owner's right, title, and interest in those items.

**TO HAVE AND TO HOLD** the Property, subject to all exceptions of record and subject to each and every superior lien and encumbrance, if any, and to the extent they are valid, existing, and affect the Property, together with all and singular the rights and appurtenances thereto in anywise belonging, unto Owner, Owner's heirs, executors, administrators, successors, or assigns, forever, in fee simple; and for, and on behalf of Owner, Owner's heirs, executors, administrators, successors, or assigns, I, on behalf of the Association, do hereby bind Owner, Owner's heirs, executors, administrators, successors, and assigns to Warrant and Forever Defend the right and title to the Property to Grantee, Grantee's heirs, executors, administrators, successors, or assigns, forever against every person whomsoever lawfully claims or to claim the same, or any part thereof, except as to any exceptions filed of record, but only to the extent the same are valid and subsisting; it being expressly understood, however, that I have made no independent investigation or inquiry concerning status of title to the Property and do not hereby make any covenant, representation, or warranty concerning the status of title to the Property.

If the Property is used for residential purposes, this conveyance is subject to Owner's right of redemption pursuant to Section 82.113(g) of TUCA. Owner's right of redemption terminates 90 days after the date of the foreclosure sale.

SIGNED on the \_\_\_\_\_ day of \_\_\_\_\_ 199\_\_\_\_.

\_\_\_\_\_  
<Agent Name>

BEFORE RECORDING  
INSERT ACKNOWLEDGMENT & RETURN ADDRESS

## APPENDIX B-8

LETTER TRANSMITTING  
FORECLOSURE DEED TO CONDOMINIUM ASSOCIATION

*[for use when association purchases residential unit]*

<Letter Date>

<Assn. Manager Name>  
<Assn. Management Firm Name>  
<Assn. Management Firm Address>

Re: Legal: Unit <Unit #>, Bldg. <Bldg. #>, <Project Name>  
Address: <Unit Address>  
Former Owner: <Owner Name>

Dear <Salutation>:

Congratulations to <Assn. Name>, which was the successful bidder at the foreclosure sale conducted by me on Tuesday, <Sale Date>. To evidence the Association's ownership of the unit, I have enclosed a file-marked copy of the deed that I delivered to the <Project County> County clerk for recording. I will forward to you the recorded original deed when I receive it from the county clerk, in approximately six weeks.

**Sale Price.** The Association bought the unit for \$<Sale Price>. Because the sale price is less than the former owner's debt, the Association "pays" by crediting that amount to the debt. Please reduce the former owner's debt on the Association's books by the amount of the sale price.

**Balance of Debt.** The foreclosure sale terminates the former owner's obligation for future assessments. However, the former owner remains personally liable for the debt that existed on the date of the foreclosure sale, including the costs of sale, after crediting the sale price. Please let me know if you wish this firm to pursue the former owner on his debt.

**Ownership Rights.** Subject to certain limitations described below, the Association has all the rights of real property ownership, including right to use, occupy, lease, and convey the unit. The Association's ownership rights, however, are subject to superior rights, including the following:

**Redemption.** Because a residential condominium unit was purchased by the Association at its own foreclosure sale, State law grants the former owner a 90-day period in which to "redeem" or repurchase the unit. During that 90-day period, the Association is prohibited from transferring title to the unit. Please let me know if the former owner contacts you about repurchasing the unit.

**Superior Liens.** The Association's ownership is subject to any outstanding liens against the unit that are superior to the Association's assessment lien, and therefore not affected by the Association's foreclosure sale. For example, property tax liens, IRS tax liens, and purchase money deed of trust liens. When the holder of a superior lien forecloses, the Association's ownership of the unit will terminate. In other words, the

<Assn. Manager Name>

<Letter Date>

Page 2

Association may expect to own the unit until a superior lien holder -- usually the purchase money mortgagee -- forecloses its lien. Because the Association is not likely to have notice of the lien holder's foreclosure sale, the superior lien may have been foreclosed *before* or on the same day as the Association's sale, or may be scheduled for foreclosure in the near future. Therefore, it is advisable for the Association to monitor the status of superior liens and to be prepared to relinquish control of the unit when foreclosure occurs. Please let me know if you want this firm's assistance in identifying and monitoring outstanding liens.

**Claim on Rents.** A mortgagee with an outstanding superior lien against the unit may have a claim on rents collected by the Association. The mortgagee's deed of trust may contain an "assignment of rents" clause that entitles the mortgagee to petition a court for permission to collect rents without foreclosing its lien. As a general rule, a lien holder may not collect rents merely by knocking on the tenant's door. However, whomever purchases the unit at the foreclosure sale of a senior lien is entitled to the rents from that foreclosure date forward.

**Landlord Status.** As the unit owner, the Association also has the risks and responsibilities of a landlord. Even though the Association acquired the unit by foreclosure and may not expect to own the unit for long, it is subject to the all the State laws and local ordinances that regulate landlords of residential properties. State law, for example, has detailed requirements for smoke detectors and locks for doors and windows. We recommend that you notify the Association's insurers about the Association's acquisition of the unit. Please let me know if you wish this firm's assistance to comply with applicable laws and ordinances.

**Unit Occupant.** Please verify the occupancy of the unit as soon as possible. When I posted the unit for the foreclosure sale, I sent a copy of the posting notice to the occupant of the unit. Because the occupant had advance notice of the foreclosure sale, his lease was effectively terminated by the sale. The Association may evict the occupant or negotiate a new lease. If the Association accepts rent *without* negotiating a new agreement, it may inadvertently ratify or accept the terms of the former owner's lease, including liability for security deposits. Because of the outstanding first mortgage, any lease agreement by the Association should state that it is subject to the mortgagee's deed of trust lien against the unit, including the mortgagee's right to foreclose. For that reason, the new lease should have a month-to-month term. Please let me know if you need assistance with a lease or eviction.

If you have any questions, or if I can be of further assistance, please contact me.

Sincerely,

Enclosure

cc: <Assn. President Name>

## APPENDIX C

RESALE MATERIALS

- C-1 Date Log for Condominium Unit Resale
- C-2 Resale Certificate Process
- C-3 Seller's request for resale certificate
- C-4 Condominium Resale Certificate
- C-5 Seller's receipt of resale certificate
- C-6 Purchaser's receipt of resale certificate
- C-7 Seller's resale affidavit
- C-8 Purchaser's waiver of resale certificate
- C-9 Resale Contingency for Project Documents
- C-10 Seller's request for project documents
- C-11 Association's certification of project documents
- C-12 Purchaser's receipt of project documents
- C-13 Purchaser's cancellation of resale contract
- C-14 Association's waiver of right of first refusal
- C-15 TREC Resale Forms:
  - TREC Condominium Resale Certificate, No. 32-0
  - TREC Residential Condominium Earnest Money Contract (Resale) -- All cash, assumption, third party conventional, or seller financing, No. 30-0
  - TREC Residential Condominium Earnest Money Contract (Resale) -- FHA Insured or VA Guaranteed Financing, No. 31-0

## APPENDIX C-1

DATE LOG FOR CONDOMINIUM UNIT RESALEDATE

_____	Date purchaser signs contract.
_____	Date <sup>1</sup> purchaser receives project documents.
_____	Cancellation date <sup>1</sup> based on project documents:  <sup>1</sup> If purchaser receives project documents <u>after</u> purchaser signs contract, purchaser may cancel within 5 days after receiving documents.
_____	Date <sup>2</sup> association receives seller's written request for resale certificate.
_____	Date <sup>2</sup> seller may prepare resale certificate affidavit if seller does not receive resale certificate from association.  <sup>2</sup> If association does not furnish resale certificate within 10 days after receiving seller's written request, seller may provide seller's affidavit.
_____	Date association prepares or signs the resale certificate.
_____	Date resale certificate becomes "stale" -- 90 days after date of association's signature.
_____	Date seller receives resale certificate from association.
_____	Date <sup>3</sup> purchaser receives resale certificate from seller.
_____	Cancellation date <sup>3</sup> based on resale certificate:  <sup>3</sup> If purchaser receives resale certificate <u>after</u> purchaser signs contract, purchaser may cancel within 5 days after receiving resale certificate.

## APPENDIX C-2

RESALE CERTIFICATE PROCESS

STEP 1: Seller gives Association a written request for a resale certificate. TUCA §82.157(b).

STEP 2: In response to the seller's request, the Association must prepare a resale certificate containing the information required by TUCA §82.157(a), and must have the resale certificate signed and dated by an officer or authorized agent of the Association. Also, the Association must deliver the resale certificate to seller or seller's agent within 10 days after receiving seller's written request. TUCA §82.157(b)

STEP 3: ASSOCIATION DOES GIVE RESALE CERTIFICATE to seller or seller's agent. TUCA §82.157(b)

STEP 4: If resale certificate is more than 3-months' old, go back to STEP 1. Otherwise, proceed to STEP 5. TUCA §82.157(a)

STEP 5: Seller (or seller's agent) gives resale certificate to purchaser. TUCA §82.157(a)

STEP 6: Purchaser may have 5-day right to cancel contract. TUCA §82.156(a)

- OR
- 1 If purchaser receives resale certificate before purchaser signs contract of sale, purchaser may NOT cancel contract based on resale certificate.
  - 2 If purchaser receives resale certificate after purchaser signs contract of sale, purchaser has 5 days from purchaser's receipt of resale certificate during which to cancel contract by giving written notice to seller.

STEP 3: ASSOCIATION FAILS TO GIVE RESALE CERTIFICATE within 10 days, or provides an incomplete resale certificate.

STEP 4: Seller gives seller's affidavit to purchaser. TUCA §82.157(b)

STEP 5: If purchaser accepts seller's affidavit, purchaser may waive resale certificate. TUCA §82.157(b)

STEP 6: Purchaser has 5-day right to cancel contract from date purchaser signs waiver. TUCA §82.156(a)

NOTE: Failure to provide a resale certificate does not void deed to purchaser. TUCA §82.157(b)

Bravo! You've mastered the resale certificate contingency. What about the contingency for the project documents?

APPENDIX C-3

SELLER'S REQUEST FOR RESALE CERTIFICATE

NAME OF CONDOMINIUM ASSOCIATION: \_\_\_\_\_

NAME OF CONDOMINIUM PROJECT: \_\_\_\_\_

UNIT NO. OR ADDRESS: \_\_\_\_\_

NAME OF UNIT OWNER/SELLER: \_\_\_\_\_

NAME OF UNIT PURCHASER: \_\_\_\_\_

As the owner of the above-described unit, I hereby request from the Association a resale certificate in connection with the proposed sale of my unit. Please furnish a resale certificate as required by the Texas Uniform Condominium Act, Section 82.157 of the Property Code.

Please notify (check one)  me  my agent (name) \_\_\_\_\_ when the resale certificate is prepared by calling (phone no.) \_\_\_\_\_. Please deliver the resale certificate to (check one)  me  my agent at the following address: \_\_\_\_\_

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ 199\_\_\_\_\_.

\_\_\_\_\_  
Owner's Signature

ASSOCIATION'S RECEIPT OF REQUEST

I acknowledge receiving this request on behalf of the Association on the \_\_\_\_\_ day of \_\_\_\_\_ 199\_\_\_\_\_. The Association  does not  does charge a fee of \$ \_\_\_\_\_ for preparing a resale certificate. The charge will be added to the owner's account.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title/Position

## APPENDIX C-4

CONDOMINIUM RESALE CERTIFICATE

NAME OF CONDOMINIUM ASSOCIATION: \_\_\_\_\_

NAME OF CONDOMINIUM PROJECT: \_\_\_\_\_

UNIT NO. OR ADDRESS: \_\_\_\_\_

NAME OF UNIT OWNER/SELLER: \_\_\_\_\_

NAME OF UNIT PURCHASER: \_\_\_\_\_

As  an officer  manager of the above-named condominium association, I certify that I am properly authorized by the association to sign this instrument on behalf of the association. I also certify that this instrument contains the information required by Section 82.157(a) of the Texas Uniform Condominium Act. Further, I certify that, to the best of my knowledge and belief, the following statements accurately reflect the state of the records of the association as of the date I sign this instrument.

1. **Restraints on Alienation.** The declaration does not contain a right of first refusal or restraint on free alienability of a unit in the condominium, except as follows: [describe limitations on leasing or selling units]
2. **Common Expenses.** The amount of the common expenses and assessments for the unit are as follows:
  - a. **Regular Assessments/Dues.** \$\_\_\_\_\_ per month is the periodic common expense assessment for the unit, based on the annual budget.
  - b. **Other Periodic Charges.** The unit is also liable to the association for its share of other common expenses for the following services: [describe other reoccurring charges, such as submetered utilities, annual insurance, cable television, security services]
  - c. **Special Assessments.** As of this date, the unit is subject to a special assessment for [describe amount and installment schedule].
  - d. **Delinquency.** As of this date, \$\_\_\_\_\_ is the amount currently due and payable for unpaid monthly assessments, special assessments, and other periodic common expense charges.
3. **Other Charges.** \$\_\_\_\_\_ is the amount of other fees currently due and payable to the association by the owner. These fees are for: [describe basis for fees, such as late charges, fines, insurance deductibles, reimbursements for damage, legal fees, collection costs, interest on debt.]
4. **Capital Expenditures.** Capital expenditures approved by the association for the next 12 months are: [describe type of project and projected amount of expenditure.]
5. **Reserves.** As of \_\_\_\_\_, the association's reserves for capital expenditures were \$\_\_\_\_\_. Those portions of the reserves designated by the association for a specified project are as follows: [describe type of project and amount reserved.]
6. **Unsatisfied Judgments.** Unsatisfied judgments against the association are as follows: [describe any unsatisfied judgments, else insert "none."]
7. **Pending Suits.** The nature of pending suits against the association are as follows: [describe any pending lawsuits, else insert "none."]

8. **Insurance.** A description of insurance coverage provided by the association for the benefit of unit owners is described on an attachment to this certificate.
9. **Alterations or Improvements.** Based on an examination of the official records of the association, the board has knowledge of the following violations of the declaration, bylaws, or rules with respect to alterations or improvements to the unit or to the limited common elements assigned to it. No assurance is given that these are the only violations that may exist. [describe violations of alterations or improvements, else insert "none."]
10. **Code Violations.** Based on an examination of the official records of the association, the board has received notice from a governmental authority concerning violations of health or building codes with respect to the following. No assurance is given that these are the only violations that may exist.
- a. The unit: [describe violations, else insert "none."]
- b. The unit's limited common elements: [describe violations, else insert "none."]
- c. Elsewhere on project: [describe violations, else insert "none."]
11. **Leaseholds.** This condominium project is not affected by a leasehold estate. Therefore, there is no statement regarding the lease's remaining term or provisions governing its extension or renewal.
12. **Management.** The name, address, and telephone number of the association's manager or managing agent is [insert required information].
13. **Disclosure of Sale-Related Fees.** In relation to the transfer of ownership, the association or its managing agent charges: *(Not required by TUCA, but recommended.)*
- a. \$\_\_\_\_\_ for preparing this certificate.
- b. \$\_\_\_\_\_ as a transfer fee for changing the association's ownership records.
- [describe other fees and charges that seller or purchaser may expect to encounter.]
14. **Attached to Certificate.** I have attached the following documents to this certificate:
- a. The current operating budget for the association.
- b. Description of insurance coverages provided by the association.

SIGNED AND CERTIFIED this \_\_\_\_\_ day of \_\_\_\_\_ 199\_\_\_\_\_.

[ASSOCIATION NAME]

By: \_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Position/Title/Company

APPENDIX C-5

SELLER'S RECEIPT OF RESALE CERTIFICATE

NAME OF CONDOMINIUM ASSOCIATION: \_\_\_\_\_

NAME OF CONDOMINIUM PROJECT: \_\_\_\_\_

UNIT NO. OR ADDRESS: \_\_\_\_\_

NAME OF UNIT OWNER/SELLER: \_\_\_\_\_

NAME OF UNIT PURCHASER: \_\_\_\_\_

BY SIGNING BELOW, I, the owner of above-described condominium unit, certify that on this day I received a resale certificate prepared by the condominium association for the above-described transaction, in the following form:

1. A 2-page resale certificate.
2. The current operating budget of the association.
3. A description of insurance coverage provided by the association for the benefit of unit owners.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ 199\_\_\_\_.

\_\_\_\_\_  
Owner's Signature

If signed below by Owner's agent, agent affirms that agent has authority to sign on behalf of Owner, and that Owner is bound by this receipt:

Agent's Signature \_\_\_\_\_

Agent's Printed Name \_\_\_\_\_

APPENDIX C-6

PURCHASER'S RECEIPT OF RESALE CERTIFICATE

NAME OF CONDOMINIUM PROJECT: \_\_\_\_\_

UNIT NO. OR ADDRESS: \_\_\_\_\_

NAME OF UNIT OWNER/SELLER: \_\_\_\_\_

NAME OF UNIT PURCHASER: \_\_\_\_\_

BY SIGNING BELOW, I, the purchaser in the proposed sale of the above-described condominium unit, certify that:

1. On this day I received a resale certificate prepared by the condominium association for the above-described unit and project.
2. If I am receiving the resale certificate after signing the contract of sale, I understand that I may cancel the contract of sale within 5 days by hand-delivering written notice of cancellation to the seller, or by mailing notice of cancellation by certified mail, return receipt requested, within the 5-day cancellation period. (Sec. 82.155(c) Property Code)

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ 199\_\_\_\_\_.

\_\_\_\_\_  
Purchaser's Signature

If signed below by Purchaser's agent, agent affirms that agent has authority to sign on behalf of Purchaser, and that Purchaser is bound by this receipt:

Agent's Signature \_\_\_\_\_

Agent's Printed Name \_\_\_\_\_

Public recording of this instrument is not required.  
To make the instrument recordable, add an ACKNOWLEDGMENT.



APPENDIX C-8

WAIVER OF RESALE CERTIFICATE  
As permitted by TUCA §82.157(b)

THE STATE OF TEXAS                    §  
  §  
COUNTY OF \_\_\_\_\_               §

NAME OF CONDOMINIUM PROJECT: \_\_\_\_\_

NAME OF CONDOMINIUM ASSOCIATION: \_\_\_\_\_

UNIT NO. OR ADDRESS: \_\_\_\_\_

NAME OF UNIT OWNER/SELLER: \_\_\_\_\_

NAME OF UNIT PURCHASER: \_\_\_\_\_

By signing below, we, the Seller and Purchaser in the proposed sale of the above-described condominium unit, certify that:

1. We understand that Texas law gives Purchasers of condominium units certain rights intended to inform and protect the purchaser, including the right to receive a condominium resale certificate issued by the condominium association.
2. Seller provided Purchaser with an affidavit stating that Seller did not timely receive from the condominium association a resale certificate or information required in the certificate, which Seller had requested from the association.
3. Purchaser voluntarily, knowingly, and intentionally relinquishes Purchaser's right under State law or the contract of sale to receive a resale certificate prepared by the association.
4. Purchaser may cancel the sale contract within 5 days after signing this waiver instrument by delivering written notice of cancellation to seller by personal delivery or certified mail return receipt requested.

SIGNED by the parties on the dates shown below.

\_\_\_\_\_  
Purchaser's Signature

Date Purchaser Signs: \_\_\_\_\_

\_\_\_\_\_  
Seller's Signature

Date Seller Signs: \_\_\_\_\_

## APPENDIX C-9

RESALE CONTINGENCY FOR PROJECT DOCUMENTS

Seller must provide purchaser with the following project documents: TUCA §82.157(a)

1. Current copy of the declaration -- the recorded instrument that creates the condominium, including its exhibits, and any recorded amendment thereto.
2. Current copy of the bylaws -- the document governing the administration and operation of the condominium, and any amendment thereto.
3. Current copy of any rules of the association, and any amendment thereto.

## SCENARIO ONE

If seller gives project documents to purchaser before purchaser signs contract of sale, purchaser may NOT cancel contract based on project documents. TUCA §82.156(a)

## SCENARIO TWO

If seller gives purchaser the project documents after purchaser signs contract, purchaser has 5 days from purchaser's receipt of project documents during which to cancel contract by giving written notice to seller. TUCA §82.156(a).

## SCENARIO THREE

If purchaser signs a contract of sale containing an underlined or **BOLD-PRINT** provision acknowledging purchaser's receipt of the project documents and recommending that purchaser read the documents before signing the contract, then purchaser may NOT cancel the contract based on project documents. TUCA §82.156(a) *Query: If purchaser gets some or all project documents after signing contract?*

## SCENARIO FOUR

If seller does not give project documents to purchaser, seller may NOT require purchaser to close. TUCA §82.156(d)

APPENDIX C-10

SELLER'S REQUEST FOR PROJECT DOCUMENTS

NAME OF CONDOMINIUM ASSOCIATION: \_\_\_\_\_

NAME OF CONDOMINIUM PROJECT: \_\_\_\_\_

UNIT NO. OR ADDRESS: \_\_\_\_\_

NAME OF UNIT OWNER/SELLER: \_\_\_\_\_

As owner of the above-described unit, I request from the Association a complete and legible copy of each of the following project documents, which sellers are required to provide to purchasers under the Texas Uniform Condominium Act, §82.157(a) Property Code:

1. The recorded declaration that creates the condominium, including exhibits, and any recorded amendments of the declaration.
2. The current bylaws of the association, including any amendments of the bylaws.
3. The current rules of the association, if any.

Please notify (check one)  me  my agent (name) \_\_\_\_\_ when the project documents are ready by calling (phone no.) \_\_\_\_\_. Please deliver the project documents to (check one)  me  my agent at the following address: \_\_\_\_\_  
 \_\_\_\_\_. I am willing to pay reasonable costs for copying and mailing the documents.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ 199\_\_\_\_\_.

\_\_\_\_\_  
Owner's Signature

ASSOCIATION'S RECEIPT OF REQUEST
----------------------------------

I acknowledge receiving this request on behalf of the Association on the \_\_\_\_\_ day of \_\_\_\_\_ 199\_\_\_\_\_. The Association  does not  does charge a fee of \$ \_\_\_\_\_ for furnishing copies of project documents. The charge  must be paid on receipt of documents or  will be added to the owner's account.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title/Position

APPENDIX C-11

ASSOCIATION'S CERTIFICATION OF PROJECT DOCUMENTS

NAME OF CONDOMINIUM ASSOCIATION: \_\_\_\_\_

NAME OF CONDOMINIUM PROJECT: \_\_\_\_\_

UNIT NO. OR ADDRESS: \_\_\_\_\_

NAME OF UNIT OWNER/SELLER: \_\_\_\_\_

As a representative of the above-named condominium association, I certify to the above-named unit owner that the project documents attached to this certificate are complete and current copies of the declaration, bylaws, and rules of the Association.

I further certify that I am properly authorized by the Association to sign this instrument on behalf of the Association.

I  have  have not attached an itemized list of the project documents.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ 199\_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title/Position

APPENDIX C-12

PURCHASER'S RECEIPT OF PROJECT DOCUMENTS

NAME OF CONDOMINIUM PROJECT: \_\_\_\_\_

UNIT NO. OR ADDRESS: \_\_\_\_\_

NAME OF UNIT OWNER/SELLER: \_\_\_\_\_

NAME OF UNIT PURCHASER: \_\_\_\_\_

BY SIGNING BELOW, I, the purchaser in the proposed sale of the above-described condominium unit, certify that:

1. **ON THIS DAY I RECEIVED COPIES OF THE CURRENT DECLARATION, BYLAWS, AND ASSOCIATION RULES FOR THE ABOVE-NAMED CONDOMINIUM PROJECT.**
2. If I am receiving the project documents before signing the contract of sale, I **UNDERSTAND IT IS RECOMMENDED THAT I READ THE PROJECT DOCUMENTS BEFORE SIGNING THE CONTRACT OF SALE.**
3. If I am receiving the project documents after signing the contract of sale, I understand that I may cancel the contract of sale within 5 days by hand-delivering written notice of cancellation to the seller, or by mailing notice of cancellation by certified mail, return receipt requested, within the 5-day cancellation period. (Sec. 82.155(c) Property Code)

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ 199\_\_\_\_\_.

\_\_\_\_\_  
Purchaser's Signature

If signed below by Purchaser's agent, agent affirms that agent has authority to sign on behalf of Purchaser, and that Purchaser is bound by this receipt:

Agent's Signature \_\_\_\_\_

Agent's Printed Name \_\_\_\_\_

Public recording of this instrument is not required.  
To make the instrument recordable, add an ACKNOWLEDGMENT.

APPENDIX C-13

PURCHASER'S CANCELLATION OF RESALE CONTRACT  
As permitted by TUCA §82.156(a)+(c)

NAME OF CONDOMINIUM PROJECT: \_\_\_\_\_

UNIT NO. OR ADDRESS: \_\_\_\_\_

NAME OF UNIT OWNER/SELLER: \_\_\_\_\_

NAME OF UNIT PURCHASER: \_\_\_\_\_

BY SIGNING BELOW, I certify that:

- 1. I am the purchaser under contract to buy the above-referenced condominium unit from the above-named seller.
- 2. [Initial the appropriate selection]

\_\_\_\_\_ I am signing and delivering this notice of cancellation within 5 days after the day I received the resale certificate prepared by the association.

\_\_\_\_\_ I am signing and delivering this notice of cancellation within 5 days after the day I signed a waiver of resale certificate.

\_\_\_\_\_ I am signing and delivering this notice of cancellation within 5 days after the day on which I received current copies of the declaration, bylaws, and any association rules.

- 3. As permitted by TUCA §82.156, I do hereby cancel my contract to purchase the above-described unit by giving this notice to the seller at the following address, by the following method, on the date signed below:

Delivered to Seller at this address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Delivered to Seller by:  Personal delivery  
 Certified mail return receipt requested

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ 199\_\_\_\_.

\_\_\_\_\_  
Purchaser's Signature



APPENDIX C-15

TREC RESALE CONTRACT FORMS

TREC Condominium Resale Certificate, No. 32-0

TREC Residential Condominium Earnest Money Contract  
(Resale) -- All cash, assumption, third party conventional, or  
seller financing, No. 30-0

TREC Residential Condominium Earnest Money Contract  
(Resale) -- FHA Insured or VA Guaranteed Financing, No. 31-0

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