

Legal Update I

December 2015

Changes in Real Estate License Act

- ▶ SB 699 – Housekeeping Bill for RELA
- ▶ See Page ___ for list of changes



THE HISTORY OF THE REAL ESTATE LICENSE ACT

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Changes in Real Estate License Act

- ▶ Salesperson is now Sales Agent
- ▶ Administrator is now Executive Director
- ▶ Core education is now Qualifying education.
- ▶ “Acts of brokerage” also include “short sale” and “lease to purchase” negotiations or advice



Changes in Real Estate License Act

- ▶ TREC commissioners & staff may present at educational sessions (no \$\$) for MCE
- ▶ TREC will now develop the IABS form or other notices to consumers,
- ▶ Clarifies: license term = 24 months
- ▶ If applicant fails exam 3 times, then additional education is required
- ▶ **New sales agents must take 8 hours of non-elective CE to renew.**



Changes in Real Estate License Act

- ▶ TREC set CE requirements by rule,
 - ▶ subject to a minimum requirement of 15 hours
 - ▶ May not increase CE hours by more than 3 hours over a license term
- ▶ Expands legal and ethics CE to 8 hours with more subjects
- ▶ Sets reporting restriction to match number of CE hours for alternative delivery c



Too much to learn. Too little time.

Changes in Real Estate License Act

- ▶ Adds a 2-yr. waiting period before reapplying after revocation, surrender, or denial of a license.
- ▶ Investigative files are confidential until the investigation ends
- ▶ Updates procedures if respondent fails to appear



Changes in Real Estate License Act

- ▶ Clarifies the process for contributions to, replenishment of, and claims against recovery fund
 - ▶ Connects designated broker and business entity broker for claim out of the recovery fund
 - ▶ Timely repayment of the fund is necessary to maintain a license



Changes in TREC Rules

- ▶ See List of Changes on Page _____
- ▶ “Licensee” is now “license holder”
- ▶ 535.2 - broker must give scope of authorized activities in writing.
- ▶ 535.4 – Jurisdictional Clarification
 - ▶ another state through the mail, Internet or other if property is in Texas.
- ▶ 535.44 only TREC may use its seal



Changes in TREC Rules

- ▶ 535.53 – Procedures to obtain and maintain Business Entity License
 - ▶ How to meet “in good standing” TREC standard
 - ▶ EX: broker may not act as D.O. if license was revoked or suspended in the past 2 years or owes \$\$ to TREC
- ▶ 535.91 - Fee to defer completion of CE for 60 days is due when renewal application is filed and CE credit for the next license period does not begin until all deferred CE is complete



Changes in TREC Rules

- ▶ 535.146 - Maintaining Trust Money rules combined
 - ▶ broker may only authorize another licensee to withdraw or transfer \$\$ from a trust account
- ▶ 535.401 - Update & clarify Easement and Right-of-Way notices
- ▶ 535.223 - Added Notice about CSST to Inspection Report Form



Property Management – HB 311

- ▶ Amends “contracts for deed” provisions of the Property Code
 - ▶ Makes contracts for deed more like traditional seller-financing
 - ▶ Makes a recorded executory contract the same as a deed with a vendor’s lien
 - ▶ Seller must record within 30 days after execution
 - ▶ Eliminates remedies of rescission and forfeiture and acceleration if contract is recorded
 - ▶ If seller fails to record, can be liable to buyer (up to \$500 per year of noncompliance)
-



Property Management – SB 478

- ▶ Supreme Court will promulgate standardized forms for persons representing themselves in L-T matters (with instructions)
- ▶ Court clerks are to inform public about the forms
- ▶ A court must accept forms unless any defect is not curable



Property Management – HB 1510

- ▶ If Landlord leases to a tenant who has been convicted of, or arrested or placed on deferred adjudication for an offense no cause of action accrues for that cause alone
- ▶ Exceptions: conviction for murder, burglary, sexual assault, indecency with a child, prostitution, human trafficking, elder or child abuse, sex offenses, and similar offenses
 - ▶ Must prove landlord or agent knew or should have known of the conviction or adjudication.



Property Management – SB 1626

- ▶ Chap. 202, Property Code - restrictions that may be imposed against installation of solar devices during the development period now applies only to developments of 50 units or less



Property Management – HB 2066

- ▶ Applies only to non-judicial foreclosure sales of residences
- ▶ Foreclosure can be rescinded within 15 days if:
 - ▶ statutory requirements not met,
 - ▶ default was cured before the sale,
 - ▶ a receivership or administration was pending at time of sale,
 - ▶ sale condition expressed before the sale was not met,
 - ▶ mortgagee and the debtor agreed to cancel the sale
 - ▶ bankruptcy stay was in effect at time of sale.



Property Management – HB 2207

- ▶ Foreclosure sale does not cut off an O&G lease if the lease is recorded before sale.
- ▶ If the property includes hydrocarbons and the surface, the sale will end the O&G lessee's surface rights to extent the mortgage has priority over the lease.



Property Management Issues – Q&A

- ▶ Property Code has 3 chapters governing L-T matters:
 - ▶ Chap. 91 applies to residential & commercial tenancies;
 - ▶ Chap. 92 applies to residential tenancies
 - ▶ Chap. 93 applies to commercial tenancies
- ▶ Other statutes (not discussed) may apply



Property Management Q&A

- ▶ For Residential Tenancies – discuss questions on Page _____
- ▶ For Commercial Tenancies – discuss questions on Page _____



Questions for Residential Tenancies

- ▶ Which conditions must a landlord repair regardless of what the lease may provide?
- ▶ Unless the landlord agrees otherwise, which conditions might the landlord not repair?
- ▶ What is a reasonable time for making repairs in a residential tenancy?



Questions for Residential Tenancies

- ▶ What is the definition of a security deposit?
- ▶ When should a residential landlord return a security deposit?
- ▶ What charges may a landlord deduct from the security deposit?
- ▶ Why is it important for a tenant to provide the landlord with a forwarding address after a lease ends?



Questions for Residential Tenancies

- ▶ May a tenant use the security deposit to pay the last month's rent?
- ▶ Is a landlord required to provide an itemization of charges he withholds from the security deposit?
- ▶ Where must smoke alarms be located in the premises?
- ▶ When must the landlord inspect the smoke alarm, and how is it inspected?



Questions for Residential Tenancies

- ▶ Does a landlord have a duty to install fire extinguishers in the dwelling?
- ▶ Do certain conditions have to be met before a landlord may charge a late fee?
- ▶ Must a landlord provide a copy of the lease to the tenant?
- ▶ May a landlord refuse to accept cash from a tenant?



Questions for Residential Tenancies

- ▶ What should the landlord do with the tenant's property and the security deposit if the tenant dies?
- ▶ What security devices must the landlord install, and when must the landlord rekey the security devices?



Questions for Residential & Commercial Tenancies

- ▶ What is normal wear and tear?
- ▶ Is subletting of leased premises permitted?
- ▶ Does a landlord have a duty to mitigate damages if the tenant abandons the lease early?



Questions for Commercial Tenancies

- ▶ Can a commercial landlord interrupt a tenant's utility service if the tenant does not pay rent?
- ▶ When may a commercial landlord prohibit the tenant from entering the leased premises?
- ▶ When does a commercial tenant abandon the premises?
- ▶ When must a commercial tenant's security deposit be refunded?



Questions for Commercial Tenancies

- ▶ What may the commercial landlord deduct from the security deposit?
- ▶ What type of documentation must the landlord provide to the tenant about deductions?
- ▶ What items may not be deducted from the commercial tenant's security deposit?



Questions for Commercial Tenancies

- ▶ If ownership of the property changes during a commercial tenancy, which owner is liable for the return of the security deposit, the former or new owner?
- ▶ May a commercial tenant withhold the last month's rent in lieu of the security deposit?
- ▶ Must a commercial tenant provide an itemized list of deductions to the security deposit?



Case Study – The Unrentable Condo (Group Discussion)

- ▶ Page _____
- ▶ Should Dantrell have known that there was a leasing restriction for new owners of the property?
- ▶ Would it make a difference if Dantrell's broker represented sellers or buyers in the sale of seven other units in that building in the past year?
- ▶ Would it make a difference if, in his role as property manager for the unit, Dantrell signed a document on behalf of the landlord that stated “tenant has been provided a copy of the HOA rules and regulations or is aware they can be viewed on the condominium website at www.condoweb.com” six months before the sale?

The Unrentable Condo (cont.)

- ▶ Did Dantrell have a duty to disclose the leasing restriction on the property if he was aware of it?
- ▶ Should Manfred, as the buyer's agent, have known that there was or could have been a leasing restriction on the property?
- ▶ What steps should an agent take as a property manager, listing agent or buyer's agent to be sure their clients are fully informed about condominium property restrictions?



Disclosures – HB 1221

- ▶ 5.008 Property Code – Adds to Seller Disclosure Notice question if seller is aware if any part of the property is located in a groundwater conservation district or a subsidence district



Disclosures – HB 1665

- ▶ 5.019, Property Code
- ▶ Requires a statutory notice to buyer of property next to a body of water with capacity over 5,000 acre feet to give a prescribed notice
- ▶ TREC & TAR forms to be amended to provide notice



Case Review – Out of Date Seller's Disclosure Notice

- ▶ 5.008, Property Code does create a duty to update the form, but a duty to update may exist if:
 - ▶ there is a confidential or fiduciary relationship;
 - ▶ one voluntarily discloses information, then whole truth must be disclosed;
 - ▶ when one makes a representation, new information must be disclosed when the new information makes the earlier representation misleading or untrue;
 - ▶ when one makes a partial disclosure and conveys a false impression.



Appendix B Discussion

- ▶ Script
- ▶ Discussion Questions on Page _____
- ▶ Should all of these documents have been presented to the seller (Otto) for signature at this time?
- ▶ Are there any issues with the description of the various documents to Otto?
- ▶ With all these documents, are there any documents missing?



Appendix B Discussion

- ▶ This scenario is based on a TREC complaint. In addition to the above scenario, Maynard listed the property in MLS as “appointment only – call listing agent.” This notation remained after the tenant vacated the property. Is this a problem knowing that Otto wanted to sell the property quickly?
- ▶ Are there other issues Maynard should
- ▶ address?



Contract Forms

- ▶ Discuss changes.
- ▶ Redlines and final forms available at TREC website
(Page _____)



Contract Form Changes

- ▶ See Page _____ for list of changes
- ▶ Para. 3,: all of the financing addenda is cited (eliminates need for Para. 4)
- ▶ The *Third Party Financing Addendum is revised accordingly*
- ▶ *Reverse Mortgage Financing Addendum is repealed.*
- ▶ Para. 4 now addresses a disclosure about self-interest
- ▶ New Para. 6E(10), Title Notices, Notice of Water Fluctuations, is added
- ▶ Para. 7A includes requirement that hydrostatic testing must be authorized separately by seller in

Contract Form Changes

- ▶ Para. 9B(5) changed to conform with a statutory change (buyer must acknowledge to a tenant the buyer has *acquired the property and is responsible for the return of the security deposit*)
- ▶ Para. 14, changed to clarify that insurance company must consent to an assignment of proceeds
- ▶ Para. 18D, eliminated penalty of trebling amount of earnest money



Contract Form Changes

- ▶ Para. 23 – adds a specific time (5 p.m.) for option deadline
- ▶ Last Page - License numbers added to Broker Information
- ▶ Para. 13 in the Farm and Ranch & Unimproved Property forms, changed to eliminate arguments about the interpretation of the clause in limited circumstances.



Contract Form Changes

- ▶ New Para. 2D in Condominium Form to address situations related to a right of first refusal after the parties enter into a contract.
- ▶ Condominium Resale Certificate is amended to conform to statutory changes
- ▶ Seller's Disclosure Notice changes to conform to statutory changes



Contract Review – Q&A

- ▶ Discuss Questions and TREC Case Studies starting on Page _____



Paragraph 1

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



Paragraph 2

- ▶ How do you verify that you have correctly inserted the legal description?



TREC Case Study 1

- ▶ What could Amos have done to avoid this complaint and the delay?
 - ▶ reviewed the seller's survey, deed and tax records to determine the correct legal description when the listing was taken,
 - ▶ not relied on the MLS's auto population feature to fill in the complete and correct legal description,
 - ▶ included a copy of the survey as an attachment to the contract instead of just making a copy available to the buyer,
 - ▶ confirmed the legal description in the contract was complete and correct by using the same description that was in the seller's vesting deed,
 - ▶ reviewed the legal description in the title commitment and
- ▶ compared it to the seller's vesting deed and other information

Paragraph 3

- ▶ How do you properly document contract price revisions?
- ▶ Can multiple boxes be checked?



Third Party Financing Addendum

- ▶ Which type of approval does the Third Party Financing Addendum address?
- ▶ What is the difference between financing (loan) approval, property approval and credit approval?



Financing Addendum

▶ True or False

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



TREC Case Study 2

- ▶ Was there a violation of statutes or TREC rules?

Why?

- ▶ Yes.
- ▶ Agent should have known that his statements misrepresented the contract and the Addendum and the buyer relied on those misstatements.



Paragraph 5

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



Paragraph 6

- ▶ Why would a buyer want to have the standard printed exception amended to read “shortages in area?”
- ▶ When the license holder receives the title commitment, what is done with it?
- ▶ What happens if the title company issues a revised commitment after you have reviewed the first one?
- ▶ If the seller furnishes an existing survey, how old can the survey be?
- ▶ What happens if the seller checks box (1) and then cannot locate the existing survey?
- ▶ What happens if the seller checks box (1) and furnishes the existing survey, but the survey is not acceptable to the buyer’s lender?



TREC Case Study 3

- ▶ How did Lan violate TREC's rules License Act?
 - ▶ Clients rely on agent's judgment, skill and expertise.
- ▶ Should Lan have recommended that Sarah have the property resurveyed?
 - ▶ Pros and cons of having the seller re-survey
 - ▶ T-47 or other disclosures.
- ▶ What TREC violations occurred?
 - ▶ Negligence and misleading advertisement.



Paragraph 7

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



Paragraph 7

▶ True or False

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



Paragraphs 9 & 10

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



Paragraph 11

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



Paragraph 13

- ▶ What type of issues with proration should you anticipate?



Paragraph 14

▶ **True or False**

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



Paragraph 18

▶ True or False

- ▶ An escrow agent becomes a party to the contract under this paragraph once the escrow agent accepts the earnest money.
- ▶ Why doesn't the title company release the earnest money when it is clear from the terms of the contract that the client should get the money?



Paragraph 21

▶ **True or False:**

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



Paragraph 23

- ▶ What happens if all boxes are not checked or filled in?
- ▶ True or False: Option money can be delivered to the seller, broker or title company.



Giving Option Fee to Title Company?

Group Discussion

What can brokers do to avoid issues raised in the case studies?

- ▶ Policies
- ▶ Education of Agents



TREC Case Study 4

What should Bob have done to avoid this result? Does it make a difference when Bob listened to voicemail?

- ▶ No.
- ▶ Broker inform clients of contractual deadlines
- ▶ Good to remind of deadlines
- ▶ Raises question about checking voicemails and emails as deadlines approach
- ▶ Results are dependent on specific facts



Effective Date

- ▶ Who fills in the effective date and when?
- ▶ Why is the effective date critical?
- ▶ Does a blank effective date invalidate the contract?



Broker Information

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



Option Fee Receipt

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



Unauthorized Practice of Law

- ▶ “Practice of law” is:
 - ▶ a service rendered out of court
 - ▶ Includes giving of advice or the rendering of a service requiring the use of legal skill or knowledge
 - ▶ Ex: preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined



Unauthorized Practice of Law Group Discussion

- ▶ Because the definition of practicing law includes the service of preparing a contract, how is it that real estate brokers and sales agents can prepare contracts for their clients and customers?



Unauthorized Practice of Law Group Discussion

- ▶ Is it possible for a license holder to engage in the unauthorized practice of law if he or she uses only standard forms promulgated by TREC or TAR?



Unauthorized Practice of Law Group Discussion

- ▶ What are some of services or actions that license holders must be cautious to avoid so as to not engage in the practice of law?



Unauthorized Practice of Law Group Discussion

- ▶ May a license holder add matters to the standard form to address matters that are covered in a standard addendum or other form?



Unauthorized Practice of Law

Group discussion

- ▶ May a license holder explain the forms without practicing law?



