

SUNSET ADVISORY COMMISSION

SPECIAL-PURPOSE REVIEW WITH COMMISSION DECISIONS

Texas Real Estate Commission

2024-25
89TH LEGISLATURE



SUNSET ADVISORY COMMISSION



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Cover photo: The Texas State Capitol was completed in 1888. With the Goddess of Liberty atop the dome, the Texas State Capitol Building is 19 feet taller than the U.S. Capitol Building in Washington, D.C. The photo shows the south facade of the Capitol. Photo Credit: Janet Wood

TEXAS REAL ESTATE COMMISSION

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SUNSET COMMISSION DECISIONS

Summary

The following material summarizes the Sunset Commission's recommendations for the Texas Real Estate Commission (TREC).

The Legislature directed the Sunset Commission to conduct a special-purpose review of TREC to evaluate legally required seller disclosures and the corresponding forms that TREC develops. The review found TREC offers standard contract forms for most required seller disclosures. However, the Sunset Commission determined additional language in TREC's disclosure forms could benefit buyers by notifying them about information, such as existing water rights and the presence of aboveground storage tanks, that could impact a property's value or desirability.

TREC's Process for Creating and Revising Seller Disclosure Forms Is Transparent and Complies with the Law.

ADOPTED NEW RECOMMENDATIONS

The Sunset Commission expressed its expectation that TREC work with the Broker-Lawyer Committee to implement the following management actions:

Additional Disclosure Information

- Direct TREC to add language to its Seller's Disclosure Form to provide a prospective buyer with information on whether the property is presently covered by insurance, including windstorm insurance, and whether the current seller has been unable to insure their property for any reason. (Management action – nonstatutory)
- Direct TREC to add language to its Seller's Disclosure Form to inform a prospective buyer if there is a private road on or adjoining the property that the prospective buyer would be financially responsible for maintaining. (Management action – nonstatutory)
- Direct TREC to work with stakeholders with expertise in groundwater and surface water to add language to its contract forms to provide a prospective buyer with relevant information on groundwater and surface water rights associated with a property. (Management action – nonstatutory)
- Direct TREC to add language to its Seller's Disclosure Form to provide a prospective buyer with information on the existence of aboveground storage tanks on the property that are more than 500 gallons and have stored petroleum products or other chemicals. (Management action – nonstatutory)
- Direct TREC to add language to its Seller's Disclosure Form to tell a prospective buyer whether their property is located in a conservation easement. (Management action – nonstatutory)

SPECIAL-PURPOSE REVIEW: TEXAS REAL ESTATE COMMISSION

TREC's Process for Creating and Revising Seller Disclosure Forms Is Transparent and Complies with the Law.

The Legislature directed the Sunset Advisory Commission to conduct a special-purpose review of the Texas Real Estate Commission (TREC) to evaluate the disclosures the law requires a seller of real property to make and the forms TREC develops to provide the required disclosures.¹ The review found TREC offers standard contract forms for most required seller disclosures and has a transparent process for creating new forms and revising existing ones. Furthermore, in preparation for this review, the agency evaluated disclosure requirements and is updating its forms to benefit buyers and sellers. As a result, Sunset staff did not identify a need for any statutory or management changes.

Background

The agency is governed by a nine-member commission appointed by the governor that consists of six licensed brokers and three public members.² TREC performs a variety of functions related to the licensure, regulation, and education of real estate professionals, including approving standard forms for use in the home or land buying process.

State and federal law require sellers to disclose certain information that could affect a property's value or desirability. Seller disclosures cover a wide range of issues, including the seller's knowledge of lead-based paint, previous flooding, and any homeowners' association fees. A seller may use "contract forms" — an umbrella term TREC uses to refer to sales contracts, notices, and amendments — to satisfy disclosure requirements.³ Statute does not require TREC to approve forms for all required seller disclosures and often prescribes the exact form language in the law. However, statute authorizes the commission to adopt rules requiring its licensees to use contract forms it does approve.⁴ In practice, the commission has required the use of only a few of the forms it has approved because licensees often have access to forms through other resources such as trade associations and private firms. Appendix A lists the 25 legally required seller disclosures.

The Texas Real Estate Broker-Lawyer Committee (BLC) assists the commission by developing the contract forms that the commission ultimately adopts through rulemaking. Statute requires BLC to draft and revise contract forms that are capable of being standardized to expedite real estate transactions and minimize controversy.⁵ The accompanying textbox provides additional detail regarding BLC's makeup.⁶ The committee meets quarterly and relies on a memorandum of understanding and a set of drafting and meeting policies to guide its work and distinguish its role from that of the commission.⁷ BLC may refer more complex or controversial matters to one of its ad hoc working groups such as the Disclosure Working Group.

BLC Composition

- Six attorneys licensed in Texas appointed by the president of the state bar.
- Six members appointed by the commission.
- One public member appointed by the governor.

Finding

TREC has a transparent process for developing and revising various seller disclosure forms.

TREC adopted a new form to notify buyers of financial information if a property is in certain taxing districts.

BLC uses its discretion appropriately to determine when the creation of a standardized disclosure form is necessary and most beneficial to minimize controversy between a buyer and seller that could result in a failed transaction. The committee considers a variety of factors in deciding whether a TREC-approved contract form is warranted, including stakeholder interest, how often the disclosure is required in home sales, whether other entities already provide a form, and the complexity of the disclosure requirements, among other considerations. BLC typically develops forms for seller disclosures that are used in a high volume of sales and that are simple enough to fit a standard template.

In preparation for this special-purpose review, TREC evaluated all laws requiring sellers to make a disclosure and ultimately adopted a new form that notifies buyers of specific financial information if the property is located in certain taxing districts. In July 2024, BLC also recommended TREC adopt revised contract forms to provide information on two additional seller disclosures.⁸ The accompanying textbox describes these forms in greater detail.⁹ The committee is also considering creating a new form or adding language to an existing form related to disclosing the existence of underground or aboveground storage tanks and has referred the matter to its Disclosure Working Group.¹⁰

New or Revised Seller Disclosures - FY 2024

- **Special taxing or assessment district:** The Notice to Purchaser of Special Taxing or Assessment District may be used to notify buyers of certain taxes, assessments, bonds, or fees on the property if a form is not available from the district. TREC decided to approve this form following changes the Legislature made in 2023 to simplify the disclosure requirements.
- **Mold remediation:** New language in proposed sale contracts states that a seller must provide the appropriate documentation if mold remediation work occurred within a certain timeframe. The documentation of work, rather than a contract form, satisfies the disclosure requirement.
- **Agriculture Foreign Investment Disclosure Act:** New language in the proposed Farm and Ranch Contract introduces this federal disclosure requirement and recommends sellers consult an attorney or tax professional for more information.

TREC's process for creating new forms or updating existing ones includes multiple opportunities for stakeholder and public participation. In addition to the input solicited through rulemaking, BLC may also request stakeholder feedback earlier in the process to inform the development of its draft forms. By proactively seeking out independent expertise and practical knowledge from real estate professionals, BLC can more meaningfully integrate diverse feedback into its draft forms. BLC may notify stakeholders of public input opportunities during its meetings, which are livestreamed and made available online, and TREC may include information about what the committee is working on in its e-newsletter.

In the course of its review, Sunset staff observed BLC engage in meaningful discussion and lengthy deliberations on required seller disclosures. The commission provides adequate oversight of this process, and the commission chair and other commissioners regularly attend BLC meetings.

¹ Chapter 941 (SB 1659), Acts of the 88th Texas Legislature, Regular Session, 2023.

² All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 1101.051, Texas Occupations Code.

³ 22 Texas Administrative Code, Part 23, Chapter 537, Section 537.1.

⁴ Section 1101.155, Texas Occupations Code.

⁵ Section 1101.254, Texas Occupations Code.

⁶ Section 1101.252, Texas Occupations Code.

⁷ Memorandum from Mark A. Moseley, General Counsel, Texas Real Estate Commission to Broker-Lawyer Committee members, March 16, 1993; Texas Real Estate Broker-Lawyer Committee, *Statement of Policies, Principles, and Guidance of the Texas Real Estate Broker-Lawyer Committee*, 2021.

⁸ Texas Real Estate Broker-Lawyer Committee, July 2024 quarterly committee meeting, July 12, 2024, archival video, time stamp 05:56:26, accessed online July 23, 2024, https://www.trec.texas.gov/apps/meetings/view.php?meeting_id=663.

⁹ Chapter 1009 (HB 2815), Acts of the 88th Texas Legislature, Regular Session, 2023; Chapter 1010 (HB 2816), Acts of the 88th Texas Legislature, Regular Session, 2023.

¹⁰ Texas Real Estate Broker-Lawyer Committee, July 2024 quarterly committee meeting, July 12, 2024, archival video, time stamp 05:05:00, accessed online July 23, 2024, https://www.trec.texas.gov/apps/meetings/view.php?meeting_id=663.

APPENDIX A | Required Seller Disclosures

Topic	Citation	TREC Form(s)
1. Additional tax liability	Section 5.010, Texas Property Code	Disclosure requirements satisfied by the Unimproved Property Contract
2. Agriculture foreign investment	Agriculture Foreign Investment Disclosure Act of 1978, 7 U.S. Code, Section 3501	None*
3. Annexation	Section 5.011, Texas Property Code	One to Four Family Residential Contract (Resale)
4. Brokers and sales agents	22 Texas Administrative Code, Part 23, Chapter 535, Subchapter N, Section 535.144	One to Four Family Residential Contract (Resale)
5. Certified water or sewer area	Section 13.257, Texas Water Code	One to Four Family Residential Contract (Resale)
6. Coastal property	Section 61.025, Texas Natural Resources Code	Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
7. Condominium resale	Section 82.157, Texas Property Code	Condominium Resale Certificate
8. Construction liability	Section 27.007, Texas Property Code	New Home Contract (Completed Construction), New Home Contract (Incomplete Construction)
9. Contract for deed	Section 5.063, Texas Property Code	None
10. Foreign person	Foreign Investment in Real Property Tax Act of 1992, 26 U.S. Code, Section 1445	None
11. Insulation	R-Value Rule, 16 Code of Federal Regulations, Section 460	New Home Contract (Improved), New Home Contract (Unimproved)
12. Lead-based paint	Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S. Code, Section 4852d	Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards as Required by Federal Law
13. Lien encumbrance	Section 5.016, Texas Property Code	Disclosure requirements satisfied by the Farm and Ranch Contract, New Home Contract (Completed Construction), New Home Contract (Incomplete Construction), One to Four Family Residential Contract (Resale), Residential Condominium Contract (Resale), Unimproved Property Contract
14. Mold remediation	Section 1958.154, Texas Property Code	None*
15. Propane gas system	Section 141.010, Texas Utilities Code	Addendum for Property in a Propane Gas System Service Area
16. Property owners' association	Section 5.012, Texas Property Code	One to Four Family Residential Contract (Resale)
17. Public improvement district	Section 5.014, Texas Property Code	Addendum Containing Notice of Obligation to Pay Improvement District Assessments
18. Seller's disclosure	Section 5.008, Texas Property Code	Seller's Disclosure Notice
19. Statutory taxing district	Section 49.452, Texas Water Code	Notice to Purchaser of Special Taxing or Assessment District
20. Storage tank	30 Texas Administrative Code, Part 1, Chapter 334, Subchapter A, Section 334.9	None

Appendix A

Topic	Citation	TREC Form(s)
21. Texas Agricultural Development District	Section 60.063, Texas Agriculture Code	Farm and Ranch Contract, Unimproved Property Contract
22. Tide waters	Section 33.135, Texas Natural Resources Code	Addendum for Coastal Area Property
23. Transfer fees	Section 5.205, Texas Property Code	One to Four Family Residential Contract (Resale)
24. Under surface conditions	Section 5.013, Texas Property Code	Disclosure requirements satisfied by the Unimproved Property Contract
25. Water level fluctuations	Section 5.019, Texas Property Code	One to Four Family Residential Contract (Resale)

* At the July 12, 2024 Texas Real Estate Broker-Lawyer Committee (BLC) meeting, BLC recommended the Texas Real Estate Commission adopt revised contract forms with information on the Agriculture Foreign Investment Disclosure Act and mold remediation disclosure. At the time of report publication, the commission had not voted on the draft forms.

Sunset Special-Purpose Review of the *Texas Real Estate Commission*

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