

What's New With My Forms?

There are 7 new Texas REALTORS® forms and changes to 40 others. Here's what you need to know. **p.20**

The certificate that protects buyers from property-tax surprises **p.16**

Don't be afraid to contact your E&O provider **p.10**

Share With Buyers: What to consider with short-term rentals **p.24**



BUILD YOUR BUSINESS WITH RE/MAX.

Experience a culture focused on the resources that lift our businesses and each other. Like supportive brokers with relevant field insight. Values that make a difference in our communities. Worldwide exposure and connections with industry experts. And over 140,000 talented agents around the globe who will inspire you to work toward greatness.



joinremax.com



YES, YOU GET ALL THIS FOR YOUR DUES

As a member of Texas REALTORS®, you receive thousands of dollars of value from your membership. You get members-only access to 150-plus forms, contracts, guides and model policies—plus, you can call the Legal Hotline to speak to an attorney about real estate topics. Your membership also includes Transactions (zipForm Agent Edition) forms management software and unlimited e-signatures with Digital Ink.

Texas REALTORS® promotes your interests, protects your industry, and fights for property owners' rights. You also have access to in-person and online training, including CE courses, designations, and certifications created by and for REALTORS®. On top of it all, you receive discounts on great products and services that will save you time and money.

GET EVEN MORE!
Check out your member benefits at texasrealestate.com/benefits

RUSSELL BERRY Chairman of the Board
MARCUS PHIPPS Chairman-Elect
DAVID ALAN COX Secretary/Treasurer
TRAVIS KESSLER CEO
ANGELA BRUTSCHÉ VP of Comm. & Mktg.
MARTY KRAMER Editor-in-Chief
WARD LOWE Assoc. Dir. of Communications
JOE OLIVIERI Assistant Editor
PATEE FRANKS Digital Marketing Specialist
JOE FISHER Marketing Specialist
JOEL MATHEWS Art Director
JOSHUA BANKS Graphic Design Manager
CHRIS NELSON Graphic Designer

CHANGE OF ADDRESS OR EMAIL
 Members should always send postal address or email changes to their local association.

CONTACT THE EDITORS
 editor@texasrealtors.com
 512-480-8200
 P.O. Box 2246
 Austin, TX 78768-2246

ADVERTISING SALES
 Mohanna Sales Representatives
 214-291-3648
 texasrealtorsinfo@mohanna.com

Texas REALTOR® (ISSN 1068-1248) is published monthly except combined issues in January/February and September/October by Texas REALTORS®.

POSTMASTER
 Send address changes to:
 Texas REALTOR® magazine
 Attention: Membership
 P.O. Box 2246
 Austin, TX 78768-2246

Periodicals Postage Paid at Austin, TX, and at additional mailing office. Annual dues of members of the association include \$5 for a one-year subscription to Texas REALTOR®. Annual subscription rate to others: \$25. Single copy rate to others: \$3.50. Office of publication: 1115 San Jacinto Blvd., #200, Austin, TX 78701-1906; mailing address: P.O. Box 2246, Austin, TX 78768-2246; phone: 512-480-8200; fax: 512-370-2390.

All articles and paid advertising represent the opinions of the authors and advertisers, and do not necessarily represent the opinions of the editors of Texas REALTOR® or the association and should not be construed as a recommendation for any course of action regarding financial, legal, or accounting matters by the association or Texas REALTOR® and its authors.

Contributions are not deductible for federal income tax purposes. Contributions to the Texas REALTORS® Political Action Committee (TREPAC) and the Texas Association of REALTORS® Federal Political Action Committee (TAR FedPAC)—which makes contributions to the REALTORS® Political Action Committee (RPAC)—are voluntary and may be used for political purposes. The amount indicated is merely a guideline, and you may contribute more or less than the suggested amount. You may refuse to contribute without reprisal, and the National Association of REALTORS®, Texas REALTORS®, and its local associations will not favor or disadvantage anyone because of the amount contributed. Until the RPAC annual goal is met, 70% of an individual's contribution goes to TREPAC and may be used to support state and local candidates; the remaining 30% is sent to TAR FedPAC to support federal candidates and is charged against your limits under 52 U.S.C. 30116. (Exception: 100% of an individual's contribution goes to TREPAC if the individual is an employee of an affiliate member of Texas REALTORS®.) After the RPAC annual goal is met, 100% of an individual's contribution goes to TREPAC and may be used to support state and local candidates. You may contact the Texas REALTORS® political committee administrator at 800-873-9155 to obtain information about your contributions.

Federal law prohibits TREPAC and FedPAC from soliciting contributions from persons not included in the following groups: Members of the association, executive and administrative personnel of the association, and the families of both groups. Contributions received in relation to this publication from a person outside of these groups will be returned.

©2022
 Texas REALTORS®
 All rights reserved.



WE'RE GOING PAC to the FUTURE

in 2022 as TREPAC
 celebrates
50 YEARS!

Go to trepac.com/50-years to learn more.



Federal law prohibits TREPAC and FedPAC from soliciting contributions from persons not included in the following groups: members of Texas REALTORS®, executive and administrative personnel of REALTOR® associations, and the family of both groups. Contributions received in relation to this publication from persons outside of these groups will be returned.

CONTENTS

12 FEATURE

Understanding the Americans with Disabilities Act

Get answers to frequently asked questions about how the ADA affects your real estate business.



14 FEATURE

Your Responsibilities with the Clear Cooperation Policy

by Joe Olivieri

NAR's Clear Cooperation Policy reinforces the consumer benefits of cooperation and ensures that MLSs are an efficient and transparent marketplace that is pro-competitive and pro-consumer. Here's what you need to do.



20 COVER STORY

What's New With My Forms?

Texas REALTORS® adopted new and revised forms on July 8. See this summary of what changed and why.



INSIGHTS

4 Chairman's message: Shifting markets

Classes for aspiring commercial agents

5 A better understanding of commissions

BUSINESS

6 Grow your business with a LinkedIn company page

Small tracts, big demand

8 New member benefit: Wise Agent

The dirt on roaches and Texas homes

Use MarketViewer to track trends

9 You can view TREC disciplinary actions

8



LEGAL & ETHICS

10 Call your E&O provider before problems escalate

11 Your Forms: Bed Bug Addendum

Call Texas REALTORS® for ethics complaints, arbitration

SHARE THIS

27 Do this before you do-it-yourself

TAKE 5

28 Manage your client's expectations

26 FEATURE

Turn Vacant Office Space Into Housing?

by Will Curtis

There are many hurdles to accomplishing a property transformation like this.



24 FEATURE

What Buyers Should Know About Short-Term Rentals

Share these considerations with your clients and prospects if they're interested in getting into the short-term rental market.



16 FEATURE

Avoid Property Tax Surprises with This Document

by Edra Bush

Get to know one of the best property tax benefits available to Texas real estate buyers. Tax certificates are easy and inexpensive to obtain and can provide protection for your client in certain tax situations.





Chairman's message

Has your market changed? Are the bidding wars calming down? Have sellers asked you why they don't have an offer a few hours after hitting the market?

As I talk with REALTORS® from around the state, I don't hear as many stories of homes with dozens of offers or other extremes. I see inventory levels rising modestly. Properties are taking a few days or weeks to sell. The number of sales has eased off from all-time highs, too.

Don't get me wrong—we still have a very healthy real estate market in almost every area of the state. The number of sales compares favorably to pre-pandemic levels. Median prices—even if they have dipped slightly in some cities compared to a few months ago—are mostly higher than at this time last year.


Those of us who have been in this business a while know that every market shifts. What we don't know right now is exactly how rising interest rates, the talk of a potential recession, and other factors will play out. We can view trends and look at economists' forecasts, but financial patterns are easier to spot in the rearview mirror. What we can do, though, is prepare.

How can you be ready no matter what the future holds for our business? For starters, make sure you have solid business planning. Make plans now for how you will operate in the future under a variety of market conditions. It's always a good idea to build a financial buffer to see you through tough times, whether they

come from market forces or a personal situation. Continually build your knowledge through real estate courses, designations, mentors, and interactions with other agents and brokers.

Rest assured that Texas REALTORS® will be there for you no matter what comes our way. That's how our association has been doing things for over a century now: looking out for REALTORS® and property owners. You can rely on Texas REALTORS® for the forms that protect you and your clients, like the new and revised ones detailed on page 20. You have access to risk-management resources, such as talking with an attorney on the Legal Hotline. You can build your skills and know-how with classes and valuable designations, including the prestigious GRI and the Texas Affordable Housing Specialist. You can network with your peers at events like the Shaping Texas Conference to be held in Fort Worth in September. You get access to zipForm as a member benefit and discounts on dozens of products and services. And you benefit immensely from the unparalleled advocacy Texas REALTORS® provides in the political, legislative, and regulatory arenas.

No one forecasted the market of the last few years—at least not to the level we experienced. Those who predict what's coming next can provide no guarantees. But if we make sure to prepare individually and collectively, success is one thing we can count on.



Russell Berry

“How can you be ready no matter what the future holds for our business? For starters, make sure you have solid business planning.”

If you want to get started in commercial real estate, the Texas Accredited Commercial Specialist certification is for you. TACS teaches you how to represent clients, perform market analyses, negotiate, and understand property development and management.

TACS has three required courses: Introduction to Commercial Real Estate, Commercial Real Estate Property Development, and

Commercial Real Estate Marketing & Negotiation.

Each has new sessions scheduled for the fall. Look for courses in Arlington, Austin, Denton, El Paso, Fort Worth, Harlingen, Houston, Marble Falls, New Braunfels, San Antonio, South Padre Island, Waco, and Weatherford. Some include remote options. Register today at texasrealestate.com/findacourse/

NEW TACS CLASSES SCHEDULED



A BETTER UNDERSTANDING OF REAL ESTATE COMMISSIONS AND WHY THEY MATTER

The practice of the seller's broker paying for the commission of the buyer's broker has worked well for so long for buyers and sellers. It allows a greater economic benefit, higher access and equity for all types of buyers, and enables small brokers to compete with larger brokers. Recently, though, this business practice has come under scrutiny and has been questioned on how it can be beneficial for all parties involved.

Here are some FAQs from the National Association of REALTORS® on why this practice is valuable to consumers:

Why not require buyers to pay commissions directly to their broker instead of the historic practice of listing brokers paying the buyer broker?

Forcing buyers to take on the additional out-of-pocket expense would cause them incredible hardship and would freeze many, particularly first-time and low- and middle-income homebuyers, out from an already competitive market. That could also force homebuyers to forgo professional help during what is likely the most complex and consequential transaction they'll make in their lifetime.

Is there a “set commission” real estate brokers charge consumers?

No. The market decides commission rates, and commissions are always negotiable. Consumers have the choice of who they want to pay and how they want to pay them. Because of the pro-consumer local MLS broker marketplace model and options like a success fee, there is unprecedented competition among real estate brokers, especially when it comes to the service and commission options available to consumers.

Additional FAQs about real estate commissions and the importance of the ongoing practice can be found at realestatecommissionfacts.com. Share this information with your clients and prospective buyers and sellers, offering them more knowledge on the commission agreement.

New E&O Program with Lower Premiums For Our Most Popular Coverage Bundle

Use code “TR50” to save \$50

Plus, \$0 out-of-pocket to defend a claim. Only pay if Damages are paid!

Reduced premium bundle includes: Agent Owned Property, Discrimination, Pollution, Open House & Showings, and More

Quote/Buy Online at cresinsurance.com/tr50
Call 800.880.2747 to customize a policy for your office

CRESSM
A Gallagher Affinity Division

TEXAS REALTORS
Risk-Management Partner

*Qualification and restrictions apply. Retention payment is required if Damages are paid. Previous transactions covered if you have continuous E&O insurance. All coverage is subject to Underwriting and other qualifications. Read the policy for a full comparison of coverage and benefits. Discount code must be presented at time of purchase. Not applicable on previous policy purchases. Texas License No.: 17030

BUSINESS

EXPAND YOUR NETWORK WITH A LINKEDIN COMPANY PAGE



You might already have a personal LinkedIn account to network and keep in contact with those you've done business with, but don't let that stop you from creating a free company page. The extra page will give you additional exposure to attract new clients, find employees, and establish more credibility.

How do you create a company page?

Log into your personal LinkedIn account and click the Work button located in the top right. Next, click Create a LinkedIn Page, then select Company to get started filling out all the necessary information about your business. Use relevant keywords and phrases in the About Us section to make it easy for people to find your real estate business through the search function.

How do you use it?

- **Broaden your reach.** Encourage your contacts and your colleagues to follow. When they comment or engage on one of your business posts, their followers will see it—increasing your company's exposure.
- **Be interesting.** Share relevant real estate-related news, MarketViewer reports, housing trends, and upcoming listings. If you have a blog or YouTube channel, cross-promote your content.
- **Make your reputation part of your branding.** People want to do business with people they like and feel they can trust. Show off your workplace culture by highlighting your team members' reviews, testimonials, and other business achievements.
- **Get your followers involved.** Do you have a job opening, volunteer opportunity, or an upcoming event? Let your followers know and give them reasons to join you and your organization.

Like with other social channels, it is important to post consistently to increase the awareness of your business. Whether it's once a week or once a month, make a commitment that you can keep.

As always, make sure to follow TREC advertising rules, the Code of Ethics, and fair housing laws.

Protect your clients from rising interest rates.



Mortgage rates can shift at a moment's notice, especially in today's market.

RateShield® by Rocket Mortgage® is the perfect solution to help protect your clients from these ever-changing rates.⁵

Here's how it works.

Get verified.

We check your client's income, assets and credit to give them a Verified Approval.

Gain approval.

Once verified, they qualify for our exclusive RateShield Approval.

Buy confidently.

Your client can shop for a home confidently knowing their rate is protected for 90 days.

Don't wait any longer. Refer your clients today. Sign in to or sign up for Rocket ProSM Insight and get started now.



Scan the QR code with your mobile device or visit RocketPro.com/RealEstate.

ROCKET Pro · Insight

BIG DEMAND FOR SMALL TRACTS OF LAND IN TEXAS

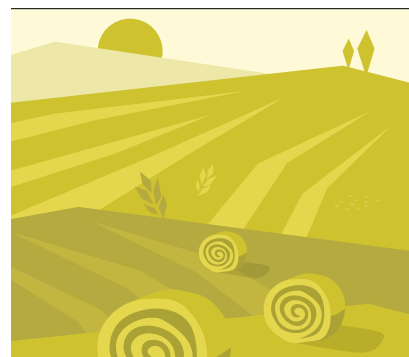
The median price per acre for small tracts of land leapt 16.4% from 2020 to 2021 and reached \$7,530.

The median tract size during that time increased 6.7% to 32 acres.

Small land sales are defined as tracts with total acreage in the first through 20th percentiles

of all land sales. That's typically sales of 200 acres or less, except in Far West Texas, where it's 8,000 acres or less.

Want to learn more about sales of small tracts of land and other real estate research? Find the *2022 Texas Small Land Sales Report* and other reports at texasrealestate.com/research.



⁵RateShield Approval is a Verified Approval with an interest rate lock for up to 90 days. If rates increase, your rate will stay the same for 90 days. If rates decrease, you will be able to lower your rate one time within 90 days. Please contact your Home Loan Expert for additional information. This offer is only valid on certain 30-year purchase loans. Additional conditions and exclusions may apply.

Your client's participation in the Verified Approval program is based on an underwriter's comprehensive analysis of their credit, income, employment status, debt, property, insurance and appraisal as well as a satisfactory title report/search. If new information materially changes the underwriting decision resulting in a denial of the credit request, if the loan fails to close for a reason outside of Rocket Mortgage's control, or if the client no longer wants to proceed with the loan, their participation in the program will be discontinued. If the client's eligibility in the program does not change and their mortgage loan does not close, they will receive \$1,000. This offer does not apply to new purchase loans submitted to Rocket Mortgage through a mortgage broker. This offer is not valid for self-employed clients. Rocket Mortgage reserves the right to cancel this offer at any time. Acceptance of this offer constitutes the acceptance of these terms and conditions, which are subject to change at the sole discretion of Rocket Mortgage. This is not a commitment to lend. Additional conditions or exclusions may apply.

Rocket Mortgage, LLC; NMLS #3030; www.NMLSConsumerAccess.org, Equal Housing Lender. Licensed in 50 states. AL License No. MC 20979, Control No. 100152352. AR, TX: 1050 Woodward Ave., Detroit, MI 48226-1906, (888) 474-0404; AZ: 1 N. Central Ave., Ste. 2000, Phoenix, AZ 85004, Mortgage Banker License #BK-0902939; CA: Licensed by the Department of Financial Protection and Innovation under the California Residential Mortgage Lending Act; CO: Regulated by the Division of Real Estate; GA: Residential Mortgage Licensee #11704; IL: Residential Mortgage Licensee #4127 - Dept. of Financial and Professional Regulation; KS: Licensed Mortgage Company MC.0025309; MA: Mortgage Lender License #ML 3030; ME: Supervised Lender License; MN: Not an offer for a rate lock agreement; MS: Licensed by the MS Dept. of Banking and Consumer Finance; NH: Licensed by the NH Banking Dept., #6743MB; NV: License #626; NJ: New Jersey - Rocket Mortgage, LLC, 1050 Woodward Ave., Detroit, MI 48226, (888) 474-0404, Licensed by the N.J. Department of Banking and Insurance; NY: Rocket Mortgage, LLC, 1050 Woodward Ave., Detroit, MI 48226 Licensed Mortgage Banker-NYS Department of Financial Services; OH: MB 850076; OR: License #ML-1387; PA: Licensed by the Dept. of Banking - License #21430; RI: Licensed Lender; WA: Consumer Loan Company License CL-3030. Conditions may apply.

©2000 - 2022 Rocket Mortgage, LLC. All rights reserved. Lending services provided by Rocket Mortgage, LLC, a subsidiary of Rocket Companies, Inc. (NYSE: RKT). Rocket Mortgage, 1050 Woodward Ave., Detroit, MI 48226-1906

WISE AGENT SOLVES YOUR CUSTOMER RELATIONSHIP NEEDS

Let the newest Texas REALTORS® member benefit make life easier for you. Wise Agent combines contact management, transaction management, lead automation, and essential marketing tools in one place. You also get seamless integrations with Gmail, Google Calendar, Facebook, Twitter, DocuSign, Evernote, Constant Contact, MailChimp, and many more services.

Work smarter, not harder with features that help you:

- **Convert more leads.** Wise Agent's lead-management system includes email, video, and text with automated follow-up.
- **Organize your contacts.** Wise Agent's easy-to-use contact manager stores and tracks all contact information with automated social media enhancements and time-stamped notes.
- **Stay on top of transactions.** Wise Agent's checklists guide you through each transaction and record every important detail. You get unlimited document storage, commission reports, and shareable progress reporting.
- **Market your business.** Wise Agent includes a powerful suite of marketing tools, such as drip campaigns, custom property fliers, digital ads, postcards, and branded newsletters.

With Wise Agent, you receive 24/7 support, unlimited free training, and complimentary one-on-one sessions for every account—no setup fees or contracts. Sign up today to take advantage of this benefit at texasrealestate.com/wiseagent.



Photos & Images: © Pymden, © Flamingo Images, © stockstudio - stock.adobe.com

Roach crashed your open house? That's not unusual.

More than 11% of households nationwide reported seeing roaches in their homes during a 12-month period, according to a U.S. Census survey from 2019.

Roaches enter homes through cracks and crevices and are attracted to food. Building traits more frequently associated with roach sightings include sagging roofs, holes in the roof, cracks inside walls, and outside walls that slope, lean, or buckle.

Roaches tend to be more common in Southern states. In the two Texas cities specified in the survey, about 35% of Houston metro area households and 18% of Dallas metro area households reporting sightings.



USE MARKETVIEWER TO TRACK SHIFTING TRENDS

How do you keep up with your ever-changing market?

MarketViewer is one of the most accurate, powerful tools for real estate data available. It puts at your fingertips the information your clients need, such as days on market, price distribution, and median price per square foot.

MarketViewer lets you define the market area you want—not just by city, but by ZIP

code or even many neighborhoods. You can also generate infographics in English, Spanish, or Vietnamese that you can share online or in person.

You and your clients can rely on MarketViewer because it has processes that remove duplicate listings and corrects common data entry errors.

View the latest data every month on the 15th and enjoy a valuable resource only available to members of Texas REALTORS®. Visit texasrealestate.com/marketviewer to get started.

TREC MAKES IT EASIER TO FIND DISCIPLINARY ACTIONS

The Texas Real Estate Commission made a change to its website, trec.texas.gov, to make it easier for people to see whether a license holder has a disciplinary history with the commission. When a user searches for a license holder, a Disciplinary Actions button now displays at the top of each license holder's page.

If a license holder has no disciplinary actions and a user clicks the new Disciplinary Actions button, the user will see a message that there is no disciplinary history found in TREC's records for the past 10 years.

Previously, only indirect methods, such as searching the Disciplinary Actions section of trec.texas.gov, would show this information.



GET REAL ESTATE E&O INSURANCE FROM A NAME YOU CAN TRUST



As an official risk management partner of the Texas REALTORS®, Pearl Insurance cares about reducing your risk and providing top-notch service.

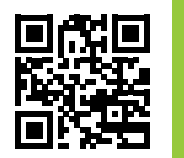
With Real Estate ProtectionPlus you'll get:

- A plan designed by and for real estate professionals
- An expert service team for faster turnarounds and best possible pricing
- A 15-year partnership with our carrier rated A+ (Superior)
- Extensive risk management tools and resources

PLUS Cyber Suite and Seller's Shield endorsements available.

Contact Chad Wenzelspratt at **800.438.2365** for a policy comparison.

Or visit pearlinsurance.com/TAR or scan the QR code to learn more.



LEGAL & ETHICS

ONE CALL CAN SAVE YOU AND YOUR BROKER MONEY

Contact your E&O provider before problems escalate



Are you nervous to talk with your errors and omissions (E&O) insurance provider?

You may worry that you'll have to file a claim if you call, or that it costs money to ask questions. What if you start an insurance claim and you end up with an angry broker, mounting legal costs, and higher premiums?

You should inform your broker and call your provider at the first sign of an E&O-related issue, says Barney Schwartz, senior vice president at Assured Partners, a Texas REALTORS® risk management partner.

"E&O providers have help lines, and why they have them is because they don't want agents and brokers to hesitate to reach out," he says.

There are several reasons you should involve your broker and provider as soon as a problem arises.

Problems can grow if ignored. Many brokerages won't reach out until a claim is "serious," Schwartz says. But by then, the issue may have turned into a lawsuit. E&O providers may be able to negotiate and resolve problems if they are included early on.

Say you get an angry email from a buyer in a past transaction who alleges the home has a problem you knew about and failed to disclose. Some agents ignore emails like this and hope the issue goes away. However, even if you are certain you did nothing wrong, you and your broker may benefit by informing your E&O insurer as soon as you receive the email. Your E&O provider can discuss options to help you resolve the situation before it turns into a full-blown lawsuit.

Settled claims are expensive. The average payout for a settled claim is \$37,000, including expenses and indemnity

payments. Claims tend to be even higher in Texas. Broker/owners who are proactive usually have fewer claims.

A new provider won't help you. Since E&O claims can arise six months to a year—or longer—after the fact, claims must be made within a policy period, Schwartz says.

Let's say you knew about an issue and did nothing, and the issue becomes a claim after you change insurance providers. When you report this as a new claim, your old provider won't cover it because the claim wasn't reported during the prior policy period. Your new provider won't cover it either because the provider asked if there was prior knowledge before their policy took effect. You knew and did nothing. So now, you may have to pay the costs yourself.

"This isn't hypothetical. I have known of this happening to three clients in the last few years," Schwartz says.

Providers can help you respond. Most E&O policies have no deductible charge and will assist if you receive a subpoena request or Texas Real Estate Commission complaint. They do this because mistakes such as a poorly answered TREC complaint or turning over more documents than legally required can turn into a claim.

Your provider knows better. E&O providers have seen these topics before and have a good understanding of your risks. Policy holders frequently call about coverage on agent-owned properties, deductible waivers, and cyber insurance. Fair housing and discrimination topics become more common in competitive and low-inventory markets.

"Brokers should feel comfortable discussing E&O topics. E&O insurers would be able to answer these questions," Schwartz says.



Your Forms

The *Bed Bug Addendum* (TXR 2013) form is used to represent that the landlord is unaware of the presence of bed bugs and to advise the tenant to inspect the property. The form also allows the tenant to indicate whether the tenant or any occupant is aware of any indication of bed bugs either at the landlord's property, the previous property where the tenant resided, or in any of the tenant's personal property. The *Bed Bug Addendum* spells out each party's responsibilities in the event bed bugs are found to be present at the landlord's property.

The form explains when landlords must be notified about bed bugs and what steps the tenant must take to help mitigate the problem. The form notes the landlord is not responsible for any damages, injuries, or losses to person or property unless the landlord caused them.

The *Bed Bug Addendum* is intended to be used with the *Residential Lease* (TXR 2001) and *Residential Lease for a Multi-Family Property Unit* (TXR 2011) forms. The addendum is one of 130 forms exclusively available to members of Texas REALTORS®.

LEGAL & ETHICS

GOT A COMPLAINT? PICK UP THE PHONE

Texas REALTORS® in June changed the process for filing ethics complaints and requesting arbitration. Consumers and REALTORS® must call Texas REALTORS® at 800-873-9155 to speak with association staff.

"Our goal is to improve customer service with our professional standards process," says Texas REALTORS® Deputy General Counsel David Jones. "This change allows callers to speak with our experienced staff, who can explain all the options available to resolve disputes—and may lead to a faster resolution."

Learn more about the complaint and arbitration processes at texasrealestate.com/complaints.



SELL MORE LAND

United Country
Real Estate

REALTREE UNITED COUNTRY
RANCH PROPERTIES

United Country Real Estate, the **LEADER** in land sales, is selling more than ever!

UNITED COUNTRY COMPANYWIDE SALES
9.3 BILLION
SOLD IN 2021
2.2 MILLION ACRES SOLD



844.415.8959
GrowWithUC.com

FARMS, RANCHES, HUNTING & RECREATIONAL LAND, COUNTRY HOMES & ALL OTHER LIFESTYLE PROPERTIES

UNDERSTANDING THE AMERICANS WITH DISABILITIES ACT



Do your business practices comply with the Americans with Disabilities Act (ADA)? Here are answers to frequently asked questions.

What is the ADA? Who does it protect?

The ADA is a federal law that prohibits discrimination against people with disabilities and ensures equal access and services to those individuals. The protections provided by the ADA are expansive and cover areas such as employment, public services, public accommodations, and telecommunications.

Under the act, a disability is a physical or mental impairment that substantially limits one or more of a person's major life activities, such as the ability to take care of oneself, perform manual tasks, walk, see, hear, breathe, learn, or work. A disability includes all forms of mental disorders, alcoholism, HIV, and previous drug addiction. ADA protection does not extend, however, to current illegal-drug users or those who pose a direct threat to the health or safety of others.



Does the ADA apply to real estate?

Yes. Title III of the ADA prohibits public accommodations and commercial facilities from discriminating against people with disabilities. Public accommodations are private entities that own, lease, lease to, or operate a place of public accommodation. Places of public accommodation include nearly every type of establishment that provides goods or services to the general public, such as a real estate brokerage office, retail stores, hotels, restaurants, and so forth. This may even include a place of public accommodation located in a private residence. Commercial facilities are privately owned, nonresidential facilities such as office buildings, factories, or warehouses.

Who enforces Title III of the ADA?

The U.S. Department of Justice enforces the ADA through complaints, lawsuits, and settlement agreements. The attorney general is tasked with investigating allegations of discrimination and can file a lawsuit when there is a pattern of alleged discrimination or in cases of general public importance. Private parties may also bring lawsuits under the ADA.

What are the penalties for not complying with the ADA?

A party found in violation of the ADA can face mandatory compliance, monetary damages, and civil penalties. The statutory text of Title III of the ADA provides for civil penalties not to exceed \$50,000 for a first violation and \$100,000 for subsequent violations. These penalties may be adjusted for inflation, however, and the current maximum civil penalty for violations of Title III of the ADA assessed after May 9, 2022, is \$103,591 for a first violation and \$207,183 for each subsequent violation.

What should a brokerage do to comply with the ADA?

Real estate brokers must make reasonable modifications in their policies, practices, or procedures to ensure their services and facilities are available to people with disabilities. Reasonable modifications include providing auxiliary aids and services at the brokerage's expense, if necessary, to meet the needs of people with disabilities. Auxiliary aids may include interpreters, notetakers, assistive-listening devices, audio recordings, or materials in Braille.

In addition, brokers must remove architectural barriers where such removal is readily achievable. Brokers can do this by considering whether they can take measures to provide access to a customer or client with a disability by installing ramps, widening doors, installing grab-bars in toilet stalls, or removing high-pile, low-density carpet. If you cannot do so without much difficulty or expense, you must provide services through alternative methods. For example, you could arrange meetings at accessible locations, such as someone's home or place of business.

Do websites have to comply with the ADA?

The United States Department of Justice (DOJ) has held that websites are places of public accommodation requiring ADA compliance. On the other hand, the courts are split on whether a website is a place of public accommodation.

Because places of public accommodation include nearly every type of establishment that provides goods or services to the general public, it's a good idea for brokerage offices to take a proactive approach and contact their website provider or a technical expert to inquire about the accessibility of their websites. There are currently no regulations setting forth detailed standards for compliance; however the DOJ recommends that business websites follow compliance guidelines, such as the Web Content Accessibility Guidelines (WCAG) and the Section 508 Standards used by the federal government.

A new tenant in my commercial property says I'm responsible for modifications to the structure to make her store compliant under the ADA. I think the tenant is responsible for the changes within her storefront. Who should make the modifications?

Under the ADA, both a tenant and owner of a place of public accommodation are subject to compliance. However, allocation of responsibility for these changes may be determined (or negotiated) in your lease. Paragraph 15C in the *Commercial Lease* (TXR 2101) provides that the party designated in the lease (determined by a checkbox) to maintain and repair the item must complete and pay the expenses of any governmental-required modification, including ADA compliance.

Nevertheless, if the tenant is designated in the lease to maintain and repair an item and does not do so, a property owner could still be held responsible for the storefront's noncompliance. Both the landlord and the tenant are still liable to third parties.



Are there any construction requirements for my client who is purchasing and remodeling an old commercial property?

Yes. The ADA Standards for Accessible Design apply to newly designed and constructed or altered places of public accommodations and commercial facilities. Public accommodations and commercial facilities that construct new buildings or alter existing structures must do so in a manner that provides accessibility to people with disabilities. A commercial facility includes office buildings, factories, wholesale facilities, or any other location where trade or business is conducted. An alteration is any change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility. New construction or alterations must be made readily accessible unless compliance is virtually impossible.

Throughout the process, your clients should document the steps they take to comply with these laws.

Are there Texas laws similar to the ADA?

Yes. Chapter 469 of the Texas Government Code, known as the Architectural Barriers Act, and the Architectural Barriers

Texas REALTORS® has more than 450 FAQs online about contracts, disclosure, commission issues, advertising rules, landlord-tenant issues, and more. Find them texasrealestate.com/faq.

Administrative Rules outline the requirements to ensure that buildings and facilities are accessible to and functional for people with disabilities.

In addition, Texas has standards to be applied during the design, construction, remodeling, and alteration of public buildings and commercial facilities. These standards are known as the Texas Accessibility Standards (TAS), which apply to various parts of a building, such as parking lots, drinking fountains, light switches, bathrooms, and ramps. The Texas Department of Licensing and Regulation enforces the TAS.

In addition to state law, each local government has the authority to adopt and enforce its own building codes.

Are there penalties for not complying with the Texas accessibility requirements?

Yes. A party found in violation of the Texas requirements can face an administrative penalty that may not exceed \$5,000 per day for each violation. Each day that a violation is not corrected is considered a separate violation.

Before imposing an administrative penalty for a violation, the Texas Department of Licensing and Regulation must notify a person responsible for the building and allow the person 90 days to bring the building into compliance. The Texas Department of Licensing and Regulation may extend the 90-day period if circumstances justify the extension. ✖

Let's Be Clear

Your Responsibilities with NAR's Clear Cooperation Policy

by Joe Olivieri



Johnny Mowad

Brokers have long used pocket listings and limited public marketing in low-inventory markets. Not only do these tactics tend to help brokers more than their clients, NAR says they also can skew MLS data, lead to lawsuits, and raise fair housing concerns.

The NAR Board of Directors responded by adopting the Clear Cooperation Policy in 2019. All MLSs had to adopt the rules by May 2020.

The Clear Cooperation Policy says brokers must submit listings to the multiple listing service within one business day of publicly marketing them. Publicly marketing is broadly defined by NAR and can include websites, emails, fliers, yard signs, and many other activities.

Questions persist about when, how, and even why the policy applies. *Texas REALTOR* magazine spoke with Johnny Mowad, the 2022 NAR MLS Forum chairman and broker associate with Ebby Halliday in Dallas, to answer these questions.

"The Clear Cooperation Policy advances equal opportunity in housing by ensuring that listings are widely available and accessible to all," he says. "Without the policy, consumers would be disadvantaged because agents could refuse to give them and their agents access to property listings that are being publicly marketed."

Off market meant off limits to some consumers

Before the policy, brokers kept properties off the MLS because of historically low inventory and high demand in popular areas, according to the NAR video "Window to the Law: Understanding the MLS Clear Cooperation Policy."

In the video, Charlie Lee, NAR senior counsel and director of legal affairs, says brokers would claim their clients needed privacy but then publicly marketed properties to a limited number of people through exclusive networks, social media, or other means. Brokers would also misuse the coming-soon status, claiming properties weren't ready but

The Clear Cooperation Policy reinforces the consumer benefits of cooperation and ensures that MLSs are an efficient and transparent marketplace that is pro-competitive and pro-consumer.



THE CLEAR COOPERATION POLICY

Within one business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, fliers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public.

then allowing a limited number of people to view or even buy the property before others could.

Mowad says brokers and MLSs across the U.S. asked NAR to consider a policy that would reinforce the consumer benefits of the MLS: accuracy, competition, and transparency. The NAR Board of Directors approved the Clear Cooperation Policy following the recommendation of the NAR MLS Committee and the Technology and Emerging Issues Advisory Board.

The Clear Cooperation Policy reinforces the consumer benefits of cooperation and ensures that MLSs are an efficient and transparent marketplace that is pro-competitive and pro-consumer, Lee says.

Follow the rules to post as coming soon

The Clear Cooperation Policy applies to the public marketing of all property listings, regardless of their status, that are for sale and subject to MLS filing requirements, Mowad says.

Property listing statuses such as coming soon, delayed showing, and other pre-marketing statuses are subject to the local rules of the MLS. MLSs are not required to provide a coming-soon status. Many of the larger MLSs in Texas have it, while some of the smaller ones do not.

If your MLS provides a coming-soon status, you're complying with the Clear Cooperation Policy if you submit your listing to the MLS in accordance with the local rules. "For example, the MLS may require that a property not be shown while it's in coming-soon status," Mowad explains.

If your MLS does not provide a coming-soon status, Mowad recommends that you talk with your MLS to know what options are available to best serve clients.

Listings can be private, with conditions

Sellers can still choose to exempt their listing from the MLS for privacy concerns, such as in case of divorces and celebrity clients. Sellers can then opt out by signing an exemption certificate and directing their listing broker accordingly, Mowad says. Such listings shall be filed with the service but not disseminated to the MLS participants.

A misconception is that the Clear Cooperation Policy created or allowed office exclusives, Mowad says. Office exclusives were allowed by an older policy, and the Clear Cooperation Policy didn't change that.

Office exclusives are exactly what they sound like: Brokers can promote listings to only their brokerage's affiliated license holders and their clients. NAR does not consider these promotions public advertising.

As soon as an office exclusive listing is publicly marketed, it must be submitted to the MLS for cooperation within one business day.

Reach out to learn more

NAR has many resources on the Clear Cooperation Policy online that you can find with the site search at nar.realtor. You can also contact your MLS to ask how the policy affects your market.

Your state and national associations are always open to member feedback, Mowad says. If you have comments and questions, do not hesitate to reach out. After all, that's how the Clear Cooperation Policy came about in the first place. ✪

JOE OLIVIERI is assistant editor of *Texas REALTOR*.



HOW IS THE POLICY ENFORCED?

Associations and MLSs are responsible for the vigorous, fair, and uniform enforcement of MLS policies, rules, and regulations, including the Clear Cooperation Policy, says Johnny Mowad. "They must foster awareness, understanding, and appreciation for the duties and responsibilities of MLS participants and subscribers, and of receiving and resolving complaints alleging violations of the rules and regulations."

Penalties for non-compliance may include an escalating process of warnings and fines.



Check with your local MLS to see if it has any specific forms that need to be used. The *Residential Real Estate Listing Agreement - Exclusive Right to Sell* (TXR 1101) and the *Exclusive Agency Addendum to Listing* (TXR 1403) reference the Clear Cooperation Policy and its requirements for listing brokers and sellers.



A **pocket listing** is a property that is not publicly marketed on the MLS.

The Document That Can Prevent Property-Tax Surprises

by Edra Bush

You know the scenario: You are working with buyers to get a property successfully closed with the best possible outcome. Your clients are excited but also anxious, and they are looking to you as their REALTOR® to be the “knower of all things.” And rightfully so! As a REALTOR®, you are well-trained, ethical, and dedicated to continuing education and professionalism. So, here is a tip that will impress your clients while enabling them to avail themselves of one of the best property tax benefits available to Texas real estate buyers: the tax certificate.

Section 31.08 of the Texas Tax Code enables any person to request a statement of any delinquent taxes, penalties, interest, costs, and expenses currently due for a particular parcel of real estate. In today’s digital age, this sort of information can be relatively easy to find for a savvy buyer. But here is the beauty of the tax certificate: The law says that if a seller sells property accompanied by a statutory tax certificate that erroneously indicates there are no taxes due or that fails to include property because of its omission from an appraisal roll, then any existing tax lien on the property is extinguished, and the buyer is absolved of any liability for omitted balances or for taxes based on omitted property.

But won’t the title company handle this for the buyer? Yes, which makes this tip especially important if your client is not using a title company. At the breakneck speeds the real estate market is moving these days, some buyers are succumbing to the pressure to forgo title insurance in exchange for a quick closing, especially in cash deals and transactions beyond the residential market. However, if there are taxes owed, the buyer is purchasing the property subject to that balance. Furthermore, if there is a pending lawsuit to collect the delinquency, your client is buying subject to that litigation as well. The tax certificate provides protection for your client in situations like these.

Perhaps best of all, tax certificates are easy and inexpensive to obtain. The tax collector for a taxing unit is required to issue a tax certificate for any taxing unit for which the collector collects. For example, in San Antonio, the Bexar County tax assessor-collector collects for Bexar County, the City of San Antonio, the local school and education districts, hospital districts, and smaller utility and improvement districts. All of the information for each of the taxing units in which a property lies would be contained in a single tax certificate issued by the tax collector. If a property lies in an area in which more than one tax collector collects for various taxing units, separate tax certificates would need to be obtained. However, the cost is capped at \$10 per certificate, so this would not be prohibitive for the average buyer.

While unpaid taxes are typically not at the forefront of buyers’ and sellers’ imaginings, the possibility of this complication does exist. Hopefully, by using a tax certificate, taxes can remain in the background, so you can keep your clients’ focus where it should be: on the excitement of purchasing that new property. ★

EDRA BUSH is a property-tax litigation partner in the San Antonio office of Linebarger Goggan Blair & Sampson, LLP. She has been practicing law for longer than she cares to think, but began her legal career in the Texas REALTORS® Legal Department 17 years ago.

“The tax certificate provides protection for your client in situations like these.”

elevate

TEXAS REALTORS®
2022 SHAPING TEXAS
CONFERENCE

TRADE EXPO

SEPTEMBER 17 | FORT WORTH CONVENTION CENTER

Join Texas REALTORS® and be part of the fun for this one-day Trade Expo on Saturday, September 17 from 10:30 a.m. to 5 p.m. Browse the booths of state and national vendors with the latest innovations in technology, real estate services, and marketing tools.

Visit texasrealestate.com/conference for additional details and complete Trade Expo listings.

Agent eLearning/Real Property Counselors
agentlearning.com

Align Right Realty International Corp
alignrightrealty.com

America’s Preferred Home Warranty
aphw.com

Black Knight MLS Solutions
blackknightinc.com/markets-we-serve/real-estate/real-estate-mls/

Brazos 1031 Exchange Company
brazos1031.com

Champions School of Real Estate
championsschool.com

Choice Home Warranty
chwpro.com/real-estate-pros

Cinch Home Services (formerly HMS)
cinchrealestate.com

GOLD SPONSOR
Ciudad Maderas
ciudadmaderas.com

The mission of Ciudad Maderas is to help every client find their place in the world; to obtain a new lifestyle through excellent customer service, innovative recreational spaces, a guarantee of added value, payment facilities, and security. Ciudad Maderas is proud to create innovative and disruptive developments throughout Mexico and will soon be expanding to other countries in the Americas.

CRES A Gallagher Affinity Division
cresinsurance.com

Cutco Closing Gifts
cutcoclosinggifts.com

Fidelity National Home Warranty
homewarranty.com

#SHAPINGTEXAS

First American Home Warranty
firstamrealestate.com

Greater McAllen Association
of REALTORS®
gmar.org

TREASURE HUNT SPONSOR

Heritage Land Bank
heritagelandbank.com

BRONZE SPONSOR

HomeTeam Inspection
Service
hometeam.com

HomeTeam takes great pride in being fast, trusted, and accurate. We bring a team of inspectors onsite, which provides a more thorough, efficient, and ultimately fast inspection. We're trusted as a national brand that has performed countless inspections.

InvisaWear
invisawear.com

BRONZE SPONSOR

JPAR® - Real Estate
jpar.com

JPAR® - Real Estate is one of the top 35 real estate brokerages in the US with over 4,000 agents across 26 states. A full-service, transaction fee-based brokerage, it has been recognized by Real Trends, NAR, and Franchise Business Review.

Junk King
junk-king.com/locations/fortworth

Kaplan Real Estate Education
kapre.com

KT Texas Empire Properties
txempireproperties.com

Landvoice
landvoice.com

Lone Star ASH
ashitexas.org

Lowen Sign Company
lowensign.com

MedTech International Group
medtechinternationalgroup.com

Moody's Analytics CRE
cre.moodyanalytics.com

MySignShine
mysignshine.com

**BRONZE SPONSOR/
TREASURE HUNT SPONSOR**

MyTexasREALTORSStore
by Consolidus
mytexasrealtorsstore.com

Where Texas REALTORS® can go for all their branded merchandise needs! You have a dedicated rep who will assist you in any budget for all your promotional product hand-outs, signage, print including business cards, closing and home buyer gifts, and more!

National Association of REALTORS®
nar.realtor

Navy Federal Credit Union
navyfederal.org

Old Republic Home Protection
orhp.com

Pearl Insurance
pearlinsurance.com

Perfect Closing Gift
perfectclosinggift.com

QuickPics
quickpics.net

RE/MAX
remax.com

Real Estate Express by Colibri
Real Estate
realestateexpress.com

Reliant Energy
reliant.com

BRONZE SPONSOR

RentSpree
rentspree.com

RentSpree is an award-winning rental software known for its easy-to-use tenant screening process, renter management, partnership program, and rental screening API. RentSpree partners with real estate's trusted names, agents, owners, and renters.

Rocket Mortgage
rocketpro.com/RealEstate

GOLD SPONSOR

SEI/NAVICA® MLS
seisystems.com

NAVICA® Plus MLS System and Mobile App is the premier suite of products in the property technology business. Our complete solution will meet and exceed all your MLS technical needs using the latest tools available. NAVICA STREAMline AMS®, with Real-Time NRDS Sync, QuickBooks® integration, and more will be the perfect addition for your real estate board or association system needs.

SentriLock
sentriunlock.com

ShowingTime
showingtime.com

SIMCA Real Estate Mexico
simcarealestate.com

Summit VA Solutions
summitvasolutions.com

Supra
supraekey.com

SWBC Mortgage
swbcmortgage.com

Texas Department of Housing and
Community Affairs - The Texas
Homebuyer Program
thetexashomebuyerprogram.com

Texas Home Service Contract
Association
homeservicecontract.org

Texas State Affordable Housing
Corporation
tsahc.org

The CE Shop
theceshop.com

Utility Concierge
utilityconcierge.com

Wise Agent
wiseagent.com/TAR

**SPECIAL THANKS
TO OUR SPONSORS**

GOLD

CIUDAD MADERAS



BRONZE



MyTexasREALTORSStore
Where Texas REALTORS go for Branded Merchandise
powered by Consolidus



What's New With My Forms?



Find out what changed with existing Texas REALTORS® forms and what new ones were adopted.

Earlier this year, Texas REALTORS® task forces examined the association's forms and proposed changes and new forms. Those proposals were published in April, and members were given a month to submit comments. The task forces discussed all the comments and feedback and adopted the following changes and new forms.

This article does not address every change made to every form; it is a summary of substantive changes. To see redlines of all the adopted changes, visit texasrealestate.com/ adopted and look under July 8. To see the new forms, visit texasrealestate.com/realtorforms and search for the form name or number.

All adopted and revised forms went into effect July 8 and are available on texasrealestate.com, in zipForm, and with other approved Texas REALTORS® forms vendors.

REPRESENTATION AGREEMENTS, GENERALLY



- ← Modernized contact information of parties.
- ← Added language to clarify that a broker has a right to terminate a representation agreement if a client defaults.
- ← Added a disclosure of the location of a property in a public improvement district or municipal utility district.

Q: Why were pre-checked boxes removed?

A: For many of these boxes, the parties may not be attaching that form to the contract. Having a checked box where no form is attached creates confusion and potential legal risk for you. For example, on the *Information About Brokerage Services* form, the agent's first substantive communication with prospective buyers, tenants, sellers, and landlords concerning specific real property, which necessitates the form be provided, may occur prior to signing a representation agreement. While some brokerages might also include it with a representation agreement, it is not required to be provided specifically at that time.

RESIDENTIAL FORMS

TXR 1925 Buyer's Walk-Through and Acceptance Form

- Added a section for the buyers to specify whether they have seen the property in person or whether they are purchasing the property sight-unseen.
- Added a section where the buyers will indicate whether they have chosen to have the property reinspected after repairs are completed.
- Added a section where the buyers will indicate whether they have chosen to purchase a residential service contract.
- Updated the title to reflect these additions: *Buyer's Walk-Through, Confirmation and Acceptance Form*.

Q: On the *Buyer's Walk-Through and Acceptance Form*, what if the seller paid for the residential service contract?

A: The TREC *One to Four Family Residential Contract (Resale)* provides that the buyer may purchase a residential service contract. If the buyer purchases such a contract, the seller shall reimburse the buyer at closing for the cost of the residential service contract. The new language in this form reflects the contract language.

TXR 1935, TXR 1936 Seller's Estimated Net Proceeds Approximation of Buyer's Closing Costs

The task force proposed pulling down these forms. However, members voiced overwhelming support to keep them. Therefore, these forms will remain available for use.

TXR 2301 Independent Contractor Agreement for Sales Associate

Added a place for the broker to authorize the geographic areas and disciplines in which the associate is authorized to practice.

TXR 1608, TXR 1609 New Residential Condominium Contract (Complete Construction) New Residential Condominium Contract (Incomplete Construction)

Added that if the buyer elects to terminate pursuant to provisions related to the delivery of update of a *Condominium Information Statement*, the buyer will get a refund of the earnest money.

Q: Why does the *Referral Agreement Between Brokers* include a box to check if the referring broker provided an IRS W-9 or other IRS form?

A: A W-9 provides necessary information to a party who is required to file a 1099. That information includes identifying information and it specifies whether the payee is an individual or corporation. It is a good idea to request a W-9 from all parties you compensate to help you assess the need to file a 1099 based on the corporate or non-corporate status of the entity and to ensure you are providing accurate information on the 1099 when you do need to file. For that reason, it is included on this form.

NEW FORM: TXR 2405 Referral Agreement Between Brokers

An agreement for a referral fee to be paid to a broker who has referred a prospective client to another broker.



WHOSE FORMS?

The changes and new forms in this update pertain only to forms created by Texas REALTORS®. As a member of Texas REALTORS®, you get exclusive access to more than 150 forms to assist you and your clients in a variety of situations. The Texas Real Estate Commission is currently considering updates to the forms it promulgates for use by all license holders. Any updates to TREC forms will likely be adopted in 2023.

COMMERCIAL FORMS

TXR 1408 Commercial Property Condition Statement

- Clarified that this form can be used by a sublessor with a sublease.
- Expanded the flood disclosures to mirror language in the residential Seller's Disclosure Notice.

TXR 1801 Commercial Contract - Improved Property

- Independent consideration for the feasibility period is now delivered to the title company.
- Additional money paid by the buyer for the extension of the feasibility period may now be considered as additional earnest money and/or independent consideration.
- Clarified that the seller is only required to deliver to the buyer property information that is in the seller's possession.
- Clarified that an overnight delivery service is an acceptable method to deliver notices under the agreement.
- The term *legal holiday* was changed to *federal reserve bank holiday*.
- Reflects the requirement of the seller to provide a public improvement district disclosure form.

TXR 2101 Commercial Lease

- The terms contained in the *Commercial Lease Addendum for Expense Reimbursement* (TXR 2103) have been incorporated directly into the *Commercial Lease* under Paragraph 4J.
- Landlords were given the authority to reserve portions of the common area parking for a specific tenant's short-term use (i.e., curbside pickup spaces).

NEW FORM: TXR 1419 Commercial Listing Agreement Termination

May be used to terminate any Texas REALTORS® commercial listing agreement.

LEASING & PROPERTY MANAGEMENT FORMS

↑ Changed all references of *pets* to *animals*.

Q: Why was the term *pet* changed to *animal* in the leasing forms?

A: Tenants were confused about the term *pet* and what constitutes a service animal in the leasing forms. The change was made in all Texas REALTORS® leasing and property management forms for consistency.

TXR 1102 Residential Real Estate Listing Agreement, Exclusive Right to Lease

- Added a notice making landlords aware of the risks of refusing a valid request for an assistance animal.
- Removed pre-checked box for *Information About Brokerage Services* under Paragraph 19.

TXR 2001 Residential Lease

- Clarified language about where to pay the rent, and added options about who can accept the first month's rent.
- Added language to clarify the tenant has to produce documentation for assistance animals.
- Added a question for landlord to note whether the property is part of an HOA.
- Added a prohibition against planting, growth, consumption, or distribution of cannabis plants or products.
- Added a prohibition against listing the property on lodging/short term rental websites and added language about guest stay limits.
- Added that all unpaid debts will bear 18% interest or the maximum allowed by law.

TXR 2003 Residential Lease Application

- Added a question asking whether the applicant has viewed the property prior to applying.
- Added a question asking if any animal identified is an assistance animal.

TXR 2201 Residential Leasing and Property Management Agreement

- Added language to cover fees if the property is not leased on the date the agreement ends and owner terminates the agreement.
- Added language to cover compensation from benefit programs or packages.
- Added language to clarify that a broker is not responsible for performing or certifying any inspections or surveys that may be required by local, state, or federal regulations.

NEW FORMS:

TXR 2016 Tenant and Occupant Information

Provides additional space for tenants and occupants to insert information that would not be inserted in the lease.

TXR 2017 Residential Lease Sight Unseen Addendum

Asks if the tenants have viewed the property before signing the lease, the manner in which the tenants viewed it, and provides notice that the tenants who lease the property sight-unseen do so at their own risk.

TXR 2018 Addendum Regarding Fee In Lieu of a Security Deposit

Allows the landlord and tenant to agree to a recurring monthly fee instead of a security deposit.

TXR 2228 Residential Tenant Estoppel Certificate

Asks the tenant to certify that the statements in the certificate are true.

TXR 2229 Notice of Termination Due to Casualty Loss

Allows either the tenant or landlord to terminate the lease in case of a casualty loss.

Q: Why is there a Residential Lease Sight Unseen Addendum but not a sight-unseen form for residential sales?

A: New sight-unseen language was added to the *Buyer's Walk-Through, Confirmation and Acceptance* form (TXR 1925). The lease is handled differently due to timing. Tenants indicate whether or not they viewed the property in person at the beginning of the lease, when the lease is signed. In sales transactions, buyers sign whether they viewed the property in person at the end of the sales transaction, just before closing.

Q: What is the Addendum Regarding Fee in Lieu of a Security Deposit and am I required to use it?

A: The form is optional. The Texas Legislature passed a bill to allow landlords to accept a monthly fee from a tenant instead of charging a security deposit. This form provides for that. It is optional for the landlord to even offer that option to tenants. Such a fee is monthly and non-refundable and payable at the same time as the rent. The agreement to pay a fee in lieu of a security deposit must be in writing and signed by the landlord and tenant. A landlord may not use a prospective tenant's choice to pay a fee or security deposit in the determination of whether to approve a lease applicant.



ALL THE REVISED FORMS

Use this QR code to view the full list of revised and new forms or visit texasrealestate.com/adopted. ★





Thinking of buying a property to turn into a short-term rental?

There's more to investing in a short-term rental than purchasing a home and cashing in. Here are some factors to consider.

CHECK LOCAL RULES AND REGULATIONS

Read local zoning rules, municipal ordinances, and restrictive covenants concerning STRs. These can determine which properties can be used as short-term rentals. Some local governments do not regulate STRs in any way, while others do not allow STRs at all. Many local governments require certain conditions be met and may require a permit. Ordinances and restrictive covenants related to parking, noise, occupancy limits, the total number of STRs allowed, and other rules vary, sometimes even from one neighborhood to the next.

NOT EVERY PROPERTY WILL BE PROFITABLE

Consider location, amenities, and appeal before purchasing a short-term rental. Vacation spots with nearby attractions are always a plus, as well as properties that can welcome several types of clientele, including families, business people, and tourists. Also, determine if the area has an oversupply of existing STRs, making it harder to rent out yours.

CONSULT AN ATTORNEY FOR LEGAL ADVICE AND DOCUMENTATION

If you are not using a listing platform like Airbnb or Vrbo, it is best to hire an attorney to prepare the necessary paperwork and advise on other matters. An attorney can also advise you on what protections listing platforms provide STR owners. REALTORS® are prohibited from providing legal opinions or advice.

BE AWARE OF TAXES

Know that only your primary residence is eligible for certain property-tax protections, such as a homestead exemption and the 10% appraisal-value cap. You might also want to consult a tax professional to determine how your short-term rental will affect your federal income taxes.

GET THE HIGHEST RETURN WITH A 5-STAR EXPERIENCE

The income from your short-term rental is tied to how often you rent it out and how much you can charge—and those factors depend in large part on good reviews. You'll get top marks by keeping your property clean, staying on top of maintenance and repairs, responding quickly to requests, and providing extra touches, such as coffee and tea supplies, information about nearby attractions, and extra phone chargers.

IS IT SAFE AND SECURE?

Pay careful attention to the safety and security measures of your STR. Be aware that local governments and restrictive covenants may have additional requirements for short-term rental properties, including inspection requirements. In addition to meeting requirements to install smoke and carbon monoxide detectors, you may want to use a front-door lock that allows you to remotely change lock codes between occupants. Post signage for potentially hazardous areas of the house, inside and out.

ARE YOU COVERED?

A regular homeowners policy may not cover you for the risks associated with a short-term rental. STR listing platforms like Airbnb and Vrbo provide some insurance coverage, but speak with an insurance professional to determine if you have the coverage you want.

GIVE GUESTS WHAT THEY EXPECT

You would save money by not providing Wi-Fi or a TV or towels, but skimping on expected items could disappoint people and lead to critical reviews. If your property *does* have obvious limitations, be upfront about it.

FOCUS ON DURABILITY AND EFFICIENCY

Furnishing a short-term rental is not like outfitting your own residence. Use furniture and fixtures that can withstand rough treatment. Also consider installing Wi-Fi thermostats and smart lighting—and leave instructions on how to use any uncommon devices. Don't assume everyone is familiar with the latest technology.

INCONSIDERATE GUESTS CAN CREATE ISSUES

Disruptive behavior by tenants can lead to complaints and possible revocation of your right to rent your property on a short-term basis. Clearly communicate noise, parking, and other rules, and deal with any problems swiftly. Some owners require a large security deposit to discourage rowdy tenant behavior.

THE LOAN PROCESS WORKS DIFFERENTLY

Many lenders will not finance short-term rentals or have different requirements to approve a loan. It's important to inform the lender upfront that the property will be utilized as an STR.

HIRE REALTORS® TO HELP YOU PURCHASE AND MANAGE THE PROPERTY

All REALTORS® pledge to abide by a Code of Ethics that goes beyond what is required by law, so you can rest assured you are working with a professional who has your best interests at heart. Some REALTORS® may be able to help you find *and* manage a short-term rental, while others specialize in just one of those areas. A REALTOR® can reduce hassles, relieve your stress, and help you reach your real estate goals. ★



Turn vacant office space into housing?

Not as easy as it sounds.

by Will Curtis



It is almost impossible to have a discussion about vacant office buildings without someone suggesting to turn that vacant office space into multifamily units. On the surface that sounds great, given that the U.S. is 5.5 million homes short of what's needed, per NAR Research. But it isn't as simple as that.

For office space to be successfully converted to multifamily, many things would have to line up.

Multifamily Rents Would Need to Exceed Office Rents

This is generally the first hurdle many office buildings face for a multifamily conversion to work. In most markets, office rents are higher than multifamily rents. You would need to find markets that have the opposite, or at least a market where average multifamily rents are higher than an office building.

Construction and Infrastructure Present Many Challenges

Recently, construction has been more difficult due to wide pricing swings and the availability of construction materials and mechanical systems. In 2021, lumber prices increased dramatically, with the cost changing almost daily. Price increases aren't the only problem. Even now there can be delays of more than a year to get some mechanical systems for commercial properties. A major conversion under this amount of uncertainty is difficult. If the cost can be overcome, timing can still be an issue. As the old adage goes, *time kills deals*.

The other thing to keep in mind is that many locations with office buildings were developed specifically for office space, so establishing things like sewer capacity, availability of water, or parking for multifamily becomes more difficult and expensive to complete. These changes may be as simple as upgrading the individual building but sometimes require new infrastructure being brought into the area. This increases the project cost exponentially, if it's even possible.

Zoning and Code Changes are Difficult to Manage

The next thing that adds a layer of complexity is working with the municipal zoning and development codes. Each municipality has different rules. Rezoning from office use to multifamily use

may not be possible without rewriting the zoning codes. Also, the development and construction codes are different for office and multifamily buildings. Many municipalities do not have the codes in place or the ability to provide the needed variances to make a conversion such as this happen. If they don't, there is always a possibility to change them, but this adds time to the project.

What About Properties That Aren't Completely Vacant?

An additional concern comes into play if there are still a few tenants in the building. Accommodating those tenants can work if the plan for the conversion is a mixed-use building. In that case, you need to work through the relocation of the tenants, which also increases the cost of the project. Alternatively, you would need to wait for leases to expire or buy out the leases from the existing tenants. Each of these options adds to the total cost of the project.

Do You Have the Time?

Completing a conversion from office to multifamily could take 12 to 18 months at best. Realistically, it might stretch on for three years or longer. It's a huge decision for an investor to pull the plug on a property with cash flow to convert it to a different use. The longer it takes, the more expensive the opportunity cost becomes. Conversions do happen, but quickly changing market conditions and the challenges presented by these other factors make this type of project difficult.

Because of the complications to repurpose office buildings to multifamily and the need for more housing, REALTORS® have asked congressional leadership in Washington D.C., to support HR 5041, The Greater Revitalization of Shopping Centers Act, which will create a grant in the Section 108 Loan Guarantee Program to help repurpose shopping centers. REALTORS® also expressed support for HR 4759, The Revitalizing Downtowns Act, which creates a Qualified Office Conversion Tax Credit to convert unused office buildings into residential, commercial, and mixed-use properties. ✪

WILL CURTIS, CCIM, CPM, is the principal broker and founder of Crossed Sabers Commercial Real Estate in San Antonio and is a Texas REALTORS® instructor. His experience is in the office and industrial markets ranging from family owned investments to Fortune 500 REITs and even economic redevelopment authorities, and he has a passion for working with fellow veteran-owned businesses.

Conversions do happen, but quickly changing market conditions and the challenges presented by other factors make this type of project difficult.

SHARE THIS

Help clients better understand real estate transactions by giving them this information. Download a PDF of this page at texasrealestate.com/sharethis.

HOW HARD COULD IT BE?

Whether you've purchased a fixer-upper or are tackling projects to get top dollar when you sell, "doing it yourself" can save money. But home improvement projects carry risks—some more than others. Consider these factors before you DIY.



DON'T MAKE A SHOCKING DISCOVERY

Before you tackle any electrical job, you need to shut off power to the circuit you're working on. Otherwise, you risk getting a nasty shock or worse. Make sure you can access the breaker box and verify which switch controls which area of the house. If you can't safely work on the circuit or have any doubts at all, call a professional.



TEST THE WATERS

Plumbing jobs can lead to leaks and flooding. A good first step is to test the water shutoff valve. Sinks and toilets usually have their own valves, but you may have to shut off water to the entire property to work on tubs, showers, and other fixtures. If your project doesn't turn out as planned, you may need to shut off the water and leave it off until you get assistance.



KNOW YOUR LIMITS

You can find instructions for thousands of home improvement projects on the internet. But a YouTube video that shows how to build a deck doesn't make you a carpenter. Before you start any DIY project, be honest about your ability and have a backup plan if things don't go well.

Certain DIY projects can improve your home and save you money. When you have real estate needs, however, trust a professional: Work with a REALTOR®.



TAKE 5



Images: © iabooost, © Tuyetky - stock.adobe.com

WHERE'S THE BIDDING WAR?

The lengthy seller's market in Texas may have your clients expecting multiple offers the moment their property hits the MLS. If that's not the current reality of your local market, here are five ways to manage sellers' expectations and ensure that they have a chance to get the best offer.

PREPARE THE PROPERTY

Sellers may think anything will sell in their neighborhood, but unless they're marketing the property as a teardown, they need to present the house in its best light. Professional staging may not be necessary, but employing basic staging principles can make a huge difference. Encourage sellers to declutter, depersonalize, and clean the property.

HELP FIND THE RIGHT PRICE

Your clients want the highest price, but an overpriced property may leave the property sitting. Let data be your guide when discussing price with your clients.

EXPLAIN THE MARKET

What are the trends in their community? If you've seen days on market increase or other notable changes, let the sellers know in plain terms. You're the expert, and they will find value in your knowledge.

WARN ABOUT THE WAIT

Appraisers are slammed. Other professionals in the transaction also may have scheduling challenges. Your sellers should be prepared for extended periods between contract and close, with the potential need for an extension depending on circumstances that arise.

MAKE SURE THEY'RE REALLY READY

Your clients may think they want an offer right now, but they may not be prepared. If they haven't purchased another property, what are their plans? Have they factored in the lender delays many buyers are experiencing? Suggest that they finalize their next steps before you list the home.

WHERE'S THE BEST DATA?

Remember that MarketViewer, a market analytics portal available exclusively to members of Texas REALTORS®, gives you the most accurate data for markets across the state. You can define the area and get market statistics, reports, and infographics to share with clients and prospects. Access it at texasrealestate.com/marketviewer.



Yes, our tools do make a difference.

Our innovative tools can make your business soar. If you want to be great, you need great tools. Look no further. Weichert® gives you an incredible set of tools to help you succeed both in the office and on the go. Work smarter with our powerful listing presentation, polished marketing materials and the industry-leading myWeichert® powered by the kvCORE platform – the #1 lead gen system available. Generate more leads. Engage more buyers and sellers. Build better relationships. Weichert tools really do make a difference. Put them to work for you. Give your local Weichert office a call today or visit jobs.Weichert.com




Weichert®

Each Weichert® franchised office is independently owned and operated. ©2021 Weichert Real Estate Affiliates, Inc. Weichert is a federally registered trademark owned by Weichert Co. All other trademarks are the property of their respective owners.



Find your escape

As a local cooperative, we share our profits with the Texans we serve. Since 2006, we've returned \$2.2 billion in combined cash and allocated equities to our members through our cooperative returns program. So, when you're ready to secure a loan for that perfect rural playground, try a partnership that really pays. **Together we're better.**

 NMLS493828 | 877.944.5500 | capitalfarmcredit.com

