

How will new laws affect you?

Several changes to state laws that affect real estate professionals, property owners, and tenants go into effect Jan. 1, 2012. Here's what you need to know.

by **Lori Levy**

Do you remember what happened during the 82nd Texas Legislature earlier this year? If you're like most people, you can barely remember what you ate for breakfast today let alone what state legislators did in May. The Texas Legislature changed and added many laws, but some specific to real estate don't take effect until Jan. 1, 2012. Here's a summary of the changes to come and what they mean for you, property owners, tenants, and real estate transactions.

Changes for you and your transactions

You'll need more experience to qualify for a broker's license

The Texas Real Estate Commission will soon require more time spent as a salesperson to qualify for a broker's license and will require you to submit evidence that you've performed a certain amount of brokerage activity during that time.

As of Jan. 1, 2012, you'll need to have been licensed as a salesperson in at least four of the previous five years. You'll also need to show, using TREC's new point system, that you've partici-

pated as a salesperson in "enough" real estate transactions during that time.

How much is enough? TREC has devised a points system that awards you for various real estate tasks. For example, representing a buyer or seller in a transaction that closed is worth 300 points, and an executed lease is worth 50 points. To qualify for a broker's license, you'll need at least 3,600 points, with some points earned in each of those four years.

Part of your broker-license application will include a sheet showing the points you've accumulated. If you're part of a sales team, you may only claim points for brokerage activity for which your name is on a document (e.g., a sales contract or a property-management agreement). Initially, you won't have to provide proof of your experience; you and your broker will sign the sheet. However, TREC will have the option to require supporting documentation.

Education requirements for a broker's license remain the same.

Buyers can get an HOA resale certificate

Beginning January 1, a homebuyer purchasing a property in a subdivision will have the ability to request a resale certificate directly from a homeowners association. The HOA may require the buyer to show he has a valid contract for the property and may require payment before beginning work on the resale certificate. The association is prohibited from processing the payment until the resale certificate is prepared and may not charge a fee at all if the certificate is not provided in a timely manner.

Buyer's representatives should be aware that for contracts entered into on or after January 1, buyers will be required to pay the fee for the resale certificate unless the buyer and seller have negotiated otherwise in the sales contract. Currently, the TREC addendum provides options for delivery of the resale certificate and states the seller will pay for it. That addendum is likely to change early in 2012 to reflect the change in law.

The law still allows sellers, seller's agents, and title and insurance companies to order updates to already issued resale certificates. But under the new law, a resale certificate is only good for 60 days. For any resale certificate older than that, a new one will have to be issued.

Tweaks to owner's and lender's title policies

Title policies could always exclude coverage of the ownership of minerals, but as of Jan. 1, 2012, title companies are no longer required to provide a 2% credit on the cost of the owner's policy for this exclusion.

Also on January 1, title companies are no longer required to insure a loss from damage to property resulting from the use of the surface of the land to extract minerals. Prior to that date, if title companies excluded minerals from coverage, they were required, upon request, to insure against such damage. This insurance was provided through an endorsement to the policy, which cost \$50. The endorsement is still available for the lender's policy and the owner's policy, but there will be no charge for the endorsement to the lender's policy. For an endorsement to the owner's policy, the charge remains \$50.

Disclosure requirements for private transfer fees

Most future private transfer fees on real property were prohibited on Sept. 1, 2011. However, as of Jan. 1, 2012, a real estate sales contract for a property with *existing* private transfer fees must disclose those fees.

Changes for property owners and tenants **HOAs face new rules for foreclosures, finances, and more**

Homeowners associations, as of Jan. 1, 2012, have new guidelines for maintaining association documents, providing access to association records, and conducting open meetings. Also, unless waived in writing by a property owner, a homeowners association will be required to use an “expedited foreclosure” process, which includes obtaining a court order, before foreclosing against a property owner. Property owners can now add or remove an HOA’s foreclosure power by a two-thirds vote of association members. Additionally, HOAs are prohibited under the new laws from foreclosing a debt consisting solely of fees charged for obtaining copies of HOA records.

The new law dictates the order by which a homeowners association must apply owners’ payments: delinquent assessments, current assessments, attorneys’ fees, and fines—affecting their ability to foreclose. Also, the notice that must be given to a property owner by an HOA before it can take certain actions against the owner, including foreclosure proceedings, must now inform the owner that he may have special rights or relief if the owner is on active military duty.

Paperless property-tax bills

Starting January 1, local tax offices can offer an electronic tax bill. Interested property owners should check with their tax office to see if they can begin receiving their bill via e-mail.

Appealing property appraisals without going to court

Also January 1, property owners in Collin, Denton, Fort Bend, and Montgomery counties whose properties are worth more than \$1 million can appeal their property appraisals through the State Office of Administrative Hearings rather than taking that appeal to district court. Property owners in Bexar, Cameron, El Paso, Harris, Tarrant, and Travis counties were given that option two years ago.

Tenants can appeal eviction regardless of ability to pay court costs

Effective January 1, a tenant unable to pay the costs of appealing a judgment in a residential eviction suit may still appeal by filing a pauper’s affidavit. The tenant will still be required to pay rent, which goes into the registry of the court, and must make a rent deposit into the registry within five days of filing the pauper’s affidavit. Without this deposit, a landlord can request a writ of possession in his favor, which the court will immediately issue. ☆

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New forms for new laws

Updated Texas Real Estate Commission sales contracts have been proposed to add provisions regarding the availability of HOA documents and the regulation of private transfer fees. Those revised forms will be adopted and made available before the January 1 effective date of the new laws.

