



# TEXAS ASSOCIATION OF REALTORS® GENERAL INFORMATION AND NOTICE TO BUYERS AND SELLERS

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**Be an informed seller or buyer. The following information may assist you during your real estate transaction.**

**ANNEXATION.** If a property is outside the limits of a municipality, the buyer should be aware that the property may later be annexed by a nearby municipality. The buyer may find information on the boundaries of nearby municipalities by contacting the municipalities directly.

**APPRAISAL.** An appraisal is a valuation of the property. An appraiser renders an estimate of value as of a certain date under assumptions and conditions stated in the appraisal report. Typically, a buyer's lender requires an appraisal to verify that the loan is secured by property that is worth a certain amount. An appraisal is not the same as an inspection.

**BROKERS.** A real estate broker *represents* a party (buyer or seller) in a real estate transaction or may act as an intermediary between the parties. A party may work with the broker or with one of the broker's agents. Both a buyer and seller will be provided a form titled "Information About Brokerage Services" (TAR 2501) which defines agency relationships. An agent may help a seller market the property or help a buyer locate a property. The agent is obligated to *negotiate* the transaction and may assist in gathering information and may coordinate many details in the transaction. Brokers and agents are not inspectors. They do not possess the expertise to conduct inspections and therefore do not make any representations, warranties, or guarantees about a property's condition. Agents are not attorneys. Parties are encouraged to seek the assistance of an attorney to help in understanding any of the legal consequences and provisions of the contract or transaction.

## **ENVIRONMENTAL CONCERNS.**

*General.* Over the years the market has identified environmental conditions that buyers should know may exist. Environmental hazards include, but are not limited to, conditions such as: asbestos, lead-based paint, mold, pesticides, radon gas, toxic waste, underground storage tanks, urea-formaldehyde insulation, and other pollutants. Wetlands or endangered species on the property may restrict the use of the property.

*Environmental Inspections.* If the buyer is concerned that environmental hazards, wetlands, or endangered species may be present on the property, the buyer should hire a qualified expert to inspect the property for such items. The parties may include a promulgated addendum (TAR 1917) in the contract that may address such matters.

*Lead-Based Paint.* If a property was built before 1978, federal law requires that the seller provide the buyer with: (1) the pamphlet titled "Protect Your Family from Lead in Your Home" (TAR 2511); (2) the records and reports the seller has concerning lead-based paint or hazards; and (3) an opportunity to have the property inspected for lead-based paint or hazards.

*Mold.* It is not uncommon to find mold spores in a property. The concern about mold increases when there are large amounts of mold found in a property. The Texas Department of Insurance publishes a document titled "Protect Your Home from Mold" (TAR 2507) which discusses mold in more detail.

*Oak Wilt and Diseased Trees.* There are diseases such as oak wilt and other conditions that may affect trees and other plants. Oak wilt is a fungus that affects certain oak trees. If the buyer is concerned about such matters, the buyer may have the trees and other plants inspected by a professional

*Noise.* Surrounding properties are used for a variety of purposes. Some of the uses cause noise (for example, airports, railways, highways, restaurants, bars, schools, arenas and construction). The buyer is encouraged to drive to review the area around the property at various times and days.

**EXPANSIVE SOILS.** Soil conditions vary greatly throughout Texas. Many soils will move; some more than others. This movement will, many times, affect the foundation of homes and buildings and may cause cracks to appear in walls or other parts of the building. Additionally, if a property is newly constructed, the concrete

curing process may also cause the foundation of the building to move. Seasonal changes in the moisture in the soil may also cause foundations to move. The buyer should check with an inspector and other experts on preventive methods to minimize the risk of such movement.

**FIRPTA.** The Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) may require buyers in certain transactions involving a seller who qualifies as a “foreign person” to withhold up to 15% of the amount realized by the seller (usually the sales price) for federal taxes. A “foreign person” is defined as a: (1) nonresident alien individual; (2) foreign corporation that has not made an election under section 897(i) of the Internal Revenue Code to be treated as a domestic corporation; or (3) foreign partnership, trust, or estate. The definition does not include a resident alien individual. A seller should notify the buyer whether the seller is a “foreign person” as defined by federal law. If the seller is unsure whether he or she qualifies as a “foreign person”, the seller should consult a tax professional or an attorney.

**FLOOD HAZARD, FLOODWAYS, AND FLOOD INSURANCE.** Many properties are in flood hazard areas. Lenders who make loans on properties located in special flood hazard areas typically require the owner to maintain flood insurance. Additionally, some properties may lie in the floodway. The Texas Association of REALTORS® publishes a form titled, “Information about Special Flood Hazard Areas” (TAR 1414), which discusses flood hazard areas and floodways in more detail. The buyer is encouraged to buy flood insurance regardless of whether the property is in a high, moderate, or low risk flood area.

**HISTORIC OR CONSERVATION DISTRICTS.** Properties located in historic or conservation districts may have restrictions on use and architecture of the properties. Local governments may create historic or conservation districts for the preservation of certain architectural appeal. A property owner may or may not be aware if the property is located in such a district. If the buyer is concerned whether the property is located in such a district, contact the local government for specific information.

#### **INSPECTION, REPAIRS, & WALK-THROUGH.**

*Inspections.* The buyer is encouraged to have the property inspected by licensed inspectors. The buyer should have the inspections completed during any option period. The buyer should accompany the inspectors during the inspections and ask the inspectors any questions. Brokers and agents do not possess any special skills, knowledge or expertise concerning inspections or repairs. If the buyer requests names of inspectors or repair professionals from an agent, the buyer should note that the agent is not making any representation or warranty as to the ability or workmanship of the inspector or repair professionals.

*Repairs.* The buyer and the seller should resolve, in writing, any obligation and any timing of the obligation to complete repairs the buyer may request before the option period expires.

*Walk-Through.* Before the close of the sale, the buyer should walk through the property and verify that any repairs are complete. If the condition of the property does not satisfy the contractual provisions, the buyer should notify the buyer’s agent before closing.

**MANDATORY OWNERS’ ASSOCIATIONS.** An owners’ association may require a property owner to be a member. The buyer may obtain subdivision information (the restrictions applying to the subdivision, the bylaws and rules of the owners’ association, and a resale certificate). The buyer may be required to pay for the subdivision information unless otherwise negotiated in the contract. If membership in an owners’ association is required, the buyer will probably be obligated to pay periodic dues or assessments. Failure to pay such dues could result in a lien on and foreclosure of the property.

**MINERAL INTERESTS.** Determining who owns the mineral interests under a property (for example, rights to oil and gas interests) normally requires an expert to review the chain of title to the property. Many times the mineral interests may have been severed from the property and may be owned by persons other than the seller. Contract forms commonly used in Texas provide that the seller’s interest, if any, in the mineral interests convey to the buyer as part of the property. However, a seller may wish to retain all or part of the mineral interests. The Texas Association of REALTORS® publishes a form titled “Information about Mineral Clauses in Contract Forms” (TAR 2509) which discusses this issue in more detail.

**MULTIPLE LISTING SERVICE.** The Multiple Listing Service (MLS) is a database and cooperative tool between brokers. Agents who use the MLS must comply with the MLS's rules. The listing agent is required to timely report the current status of a listing, including when the property is sold or leased or is no longer available, as well as the sales price. Subscribers (other brokers, agents, appraisers, and other real estate professionals) and appraisal districts have access to the information for market evaluation purposes. Much of the information in the MLS, such as square footage, assessed value, taxes, school boundaries, and year built is obtained from different sources such as the county appraisal district, an appraiser, or builder. The broker or agent who provides information from the MLS does not verify the accuracy of the information. The buyer should independently verify the information in the MLS and not rely on the information.

**PERMITS.** Permits may be required to construct, alter, repair, or improve the property. The buyer is encouraged to contact the local government to verify that all required permits have been obtained, as this may impact future plans for the property.

**POSSESSION.** Most contracts provide that the seller will deliver possession of the property to the buyer at the time the sale *closes and funds or according to a temporary residential lease or other written lease required by the parties*. There may be a short delay between closing and actual funding; especially if the buyer is obtaining funds from a lender. The buyer may need to verify with the lender if the loan will fund on the day of closing. The buyer should also take this potential delay into account when planning the move into the property. Any possession by the buyer before the sale closes and funds (or by the seller after the sale closes and funds) must be authorized by a written lease.

**PROPERTY INSURANCE.** Promptly after entering into a contract to buy a property and before any option period expires, the buyer should contact an insurance agent to determine the availability and affordability of insurance for the property. There are numerous variables that an insurance company will evaluate when offering insurance at certain coverage levels and at certain prices. Most lenders require that the property be insured in an amount not less than the loan amount. The failure to obtain property insurance before closing may delay the transaction or cause it to end. The Texas Association of REALTORS® publishes a document titled, "Information about Property Insurance for a Buyer or Seller" (TAR 2508), which discusses property insurance in more detail.

**RESIDENTIAL SERVICE CONTRACTS.** A residential service contract is a product under which a residential service company, for an annual fee, agrees to repair or replace certain equipment or items in a property (for example, covered appliances, air conditioning and heating systems, and plumbing systems). Co-payments typically apply to most service calls. If the buyer requests names of residential service companies from an agent, the buyer should note that the agent is not making any representation or warranty about the service company.

**RESTRICTIONS ON PROPERTY NEAR AN INTERNATIONAL BORDER.** Be aware that in certain counties located near an international border, Texas law may prohibit the sale of property lacking required water and sewer services. Even if a sale of such property is permitted, a buyer may face additional costs or restrictions under Texas law due to a lack of basic infrastructure (water, sewer, roads, and drainage). The Texas Association of REALTORS® publishes a form titled, "Information Regarding Property Near an International Border" (TAR 2519), which provides more information. Brokers and agents cannot guarantee that a sale of the property is permitted under Texas law or otherwise give legal advice. Consult an attorney.

**SCHOOL BOUNDARIES.** School boundaries may change and are, at times, difficult to determine. The school boundaries that an agent may provide or that may be provided through a Multiple Listing Service are only mapped estimates from other sources. The buyer is encouraged to verify with the school district which schools residents in the property will attend.

**SEPTIC TANKS AND ON-SITE SEWER FACILITIES.** Many properties have septic tanks or other on-site sewer facilities. There are several types of such systems. Special maintenance requirements may apply to certain systems. Please refer to a document titled, "Information about On-Site Sewer Facility" (TAR 1407) for

more information. The buyer should also determine if the county requires any registration or other action to begin using the septic system or on-site sewer facility.

**SEX OFFENDERS AND CRIMINAL ACTIVITY.** Neither a seller nor a seller's agent of a residential property has a duty to disclose any information about registered sex offenders. If the buyer is concerned about sex offenders who may reside in the area, access [www.txdps.state.tx.us](http://www.txdps.state.tx.us). Contact the local police department to obtain information about any criminal activity in the area.

**SQUARE FOOTAGE.** If the purchase price is based on the size of the property's building and structures, the buyer should have any information the buyer receives about the square footage independently verified. Square footage information comes from other sources such as appraisal districts, appraisers, and builders. Such information is only an estimate. The actual square footage may vary.

**STATUTORY TAX DISTRICTS.** The property may be located in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services (for example a Municipal Utility District, Water Improvement District, or a Public Improvement District). The buyer is likely to receive a prescribed notice when buying property in such a district.

**SURVEILLANCE.** Be aware that when viewing a property, a seller might record or otherwise electronically monitor a buyer without the buyer's knowledge or consent, and a buyer might photograph or otherwise record the property without the seller's knowledge or consent. The parties should consult an attorney before recording or photographing another person or property.

**SURVEY.** A survey identifies the location of boundaries, major improvements, fence lines, drives, encroachments, easements, and other items on the property. The buyer should obtain a survey early enough in the transaction to help the buyer identify any encroachments, encumbrances to title, or restrictions. The contract will typically contain a provision which identifies who is responsible for providing a survey and the right to object to encumbrances to title disclosed in the survey.

**SYNTHETIC STUCCO.** Synthetic stucco (sometimes known as EIFS) is an exterior siding product that was placed on some properties in the recent past. If the product was not properly installed, it has been known to cause damage to the structure (such as wood rot and moisture). If the property has synthetic stucco, the buyer should ask an inspector to carefully inspect the siding and answer any questions.

**TAX PRORATIONS.** Typically, a buyer and seller agree to prorate a property's taxes through the closing date. Property taxes are due and payable at the end of each calendar year. The escrow agent will estimate, at closing, the taxes for the current year. If the seller is qualified for tax exemptions (for example, homestead, agricultural, or over-65 exemption), such exemptions may or may not apply after closing. After closing the taxes may increase because the exemptions may no longer apply. When buying new construction, the taxes at closing may be prorated based on the land value only and will later increase when the appraisal district includes the value of the new improvements. The actual taxes due, therefore, at the end of the year and in subsequent years may be different from the estimates used at closing.

**TERMINATION OPTION.** Most contract forms contain an option clause which provides the buyer with an unrestricted right to terminate the contract. Most buyers choose to buy the termination option. The buyer will be required to pay for the termination option in advance. The option fee is negotiable. Most buyers will conduct many of their reviews, inspections, and other due diligence during the option period. The buyer must strictly comply with the time period under the option. The option period is not suspended or extended if the buyer and the seller negotiate repairs or an amendment. If the buyer wants to extend the option period, the buyer must negotiate an extension separately, obtain the extension in writing, and pay an additional fee for the extension. The buyer should not rely on any oral extensions.

**TIDE WATERS.** If the property adjoins any of the state's tidal waters, the seller will provide the buyer with a prescribed notice titled, "Addendum for Coastal Area Notice" (TAR 1915). Boundaries of properties along such waters may change and building restrictions will apply. If the property is located seaward of the Gulf

Intracoastal Waterway, the seller will provide the buyer with a prescribed notice titled, "Addendum for Property Located Seaward of the Gulf Intracoastal Waterway" (TAR 1916).

**TITLE INSURANCE OR ABSTRACT OF TITLE.** The buyer should obtain a title insurance policy or have an abstract of title covering the property examined by an attorney. If the buyer obtains a title insurance policy, the buyer should have the commitment of title insurance reviewed by an attorney not later than the time required under the contract.

**UTILITIES.** The buyer should evaluate what utilities the buyer will require and check to be sure that the utilities available in the area suit the buyer's needs. Some structures may or may not have utilities and electrical facilities to support many modern appliances or equipment.

**WATER LEVEL FLUCTUATIONS.** State law requires the seller to notify a buyer of a property that adjoins a lake, reservoir, or other impoundment of water with a storage capacity of at least 5,000 acre-feet at its normal operating level that the water level may fluctuate. The buyer and seller can find a list of lakes and reservoirs with at least 5,000 acre-feet storage capacity by accessing <http://texasalmanac.com/topics/environment/lakes-and-reservoirs>.

**WATER WELLS.** If the property has a water well, the buyer should have, and the lender may require, the equipment inspected and water tested. The buyer should also determine if the county requires any registration or other action to begin using the water well.

**WIRE FRAUD.** Criminals are targeting real estate transactions by gaining access to electronic communications or sending emails that appear to be from a real estate agent, a title company, lender, or another trusted source. Refrain from transmitting personal information, such as bank account numbers or other financial information, via unsecured email or other electronic communication. If the buyer receives any electronic communication regarding wiring instructions, even if the communication appears to come from a legitimate source, the buyer should verify its authenticity prior to the transfer of funds in person or via phone call using a recognized phone number that is not found in the communication.

**OTHER.**

This form was provided by:

By signing below I acknowledge that I received, read, and understand this information and notice.

\_\_\_\_\_  
Broker's Printed Name

\_\_\_\_\_  
Buyer Seller Date

By: \_\_\_\_\_  
Broker's Associate's Signature Date

\_\_\_\_\_  
Buyer Seller Date