TREC

TEXAS REAL ESTATE COMMISSION

Legal Update I

2026-2027

12th Edition

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Chapter 1

Rules, Updates, and Legislative Changes

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Learning Objectives

After this chapter, you will be able to

- ✓ Describe TREC's advisory committees that examine different areas of the real estate industry.
- ✓ Explain the TREC rulemaking process.
- ✓ Identify recent TREC rule changes that affect license holders.
- ✓ Understand legislation passed by the 89th Texas Legislature relating to the practice of real estate.

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Rules and Statutes: What's the Difference?

Throughout this course there are many references to TREC rules and Texas statutes Although TREC rules originate from the Commission and Texas statutes from the Texas Legislature, you should think of TREC rules and statutes as one and the same: They are the requirements you must follow to maintain your license and avoid disciplinary action.

Texas Statutes

In Texas, elected officials go through the lawmaking process every odd-numbered year during a 140-day regular session. During session and the interim, or the time between legislative sessions, they work with stakeholders to identify updates or additions to statutes. The public can weigh in on the lawmaking process through public and written testimony or contacting elected officials' offices directly.

The Texas Legislature has given TREC statutory authority, or legal authority, to regulate certain real estate professionals through education, licensure, and disciplinary action. Sometimes, the statutes the legislature passes tell TREC exactly what it is supposed to do to regulate these professions. Other statutes give TREC the authority to create rules on its own to fulfill its duty to regulate.

TREC Rules

TREC is a government agency. TREC rules are considered state law and should be followed as such. It is called a "rule" if it originated with the agency instead of the legislature. Even so, TREC goes through a very similar process to lawmaking through its rulemaking procedures. License holders and the public may identify issues that should be addressed. TREC determines whether it currently has authority from the legislature to make or modify a rule or if a statute would need to be changed during the legislative session by lawmakers to get that authority. If TREC has the authority, it will propose the rule changes, accept public comment, consider that public comment, and then decide whether to adopt rule changes.

You'll learn more about the rulemaking process in this course, but the key takeaway is that awareness of TREC rules and Texas statutes that govern your business practice is essential to your success.

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Who Makes the Rules?

Fact or fiction?

TREC staff members come up with the rule and contract form changes themselves.

Fiction!

Rule change initiatives generally come from changes in the law, advisory committees, the nine TREC Commissioners, and public input from license holders like you. Ultimately, the full Commission votes on whether to adopt a rule. Staff's role includes creating drafts of changes for committees to review and approve, submitting rules to the Texas Register, submitting certain proposed rule changes to the Regulatory Compliance Division of the Governor's Office, and implementing associated changes when adopted, among other tasks.

There's a Committee for That!

TREC utilizes advisory committees to examine different areas of the real estate industry with a focus on consumer protection. As of publication, TREC has four active advisory committees, each with a different purpose and members that include license holders and subject-matter experts.

What Do Advisory Committees Do?

Sometimes, advisory committee discussions and recommendations prompt rule changes. Other times, the Commission may ask a committee to consider a specific issue, like required education for brokers and sales agents. Advisory committees typically meet quarterly, and meetings are open to the public. License holders are encouraged to attend and participate.

Who Gets to Serve on Advisory Committees?

TREC administers an application process for potential advisory committee members every year and seeks individuals to fill specific roles. Selection committees composed of Commissioners review the applications and make appointments.

If you are interested in serving on a committee, subscribe to TREC's e-newsletters via trec.texas.gov/newsletters, follow TREC on social media, or regularly check trec.texas.gov for announcements.

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Here are the four advisory committees, who they are composed of, and their function.

Broker Responsibility Advisory Committee (BRAC)

- **Duties:** BRAC is tasked with advising TREC as to issues surrounding broker responsibility within the real estate industry. This committee may make recommendations to TREC regarding possible legislative and rule changes associated with brokers and broker responsibility issues affecting both the real estate industry and consumers.
- **Members:** Nine real estate broker license holders.

Education Standards Advisory Committee (ESAC)

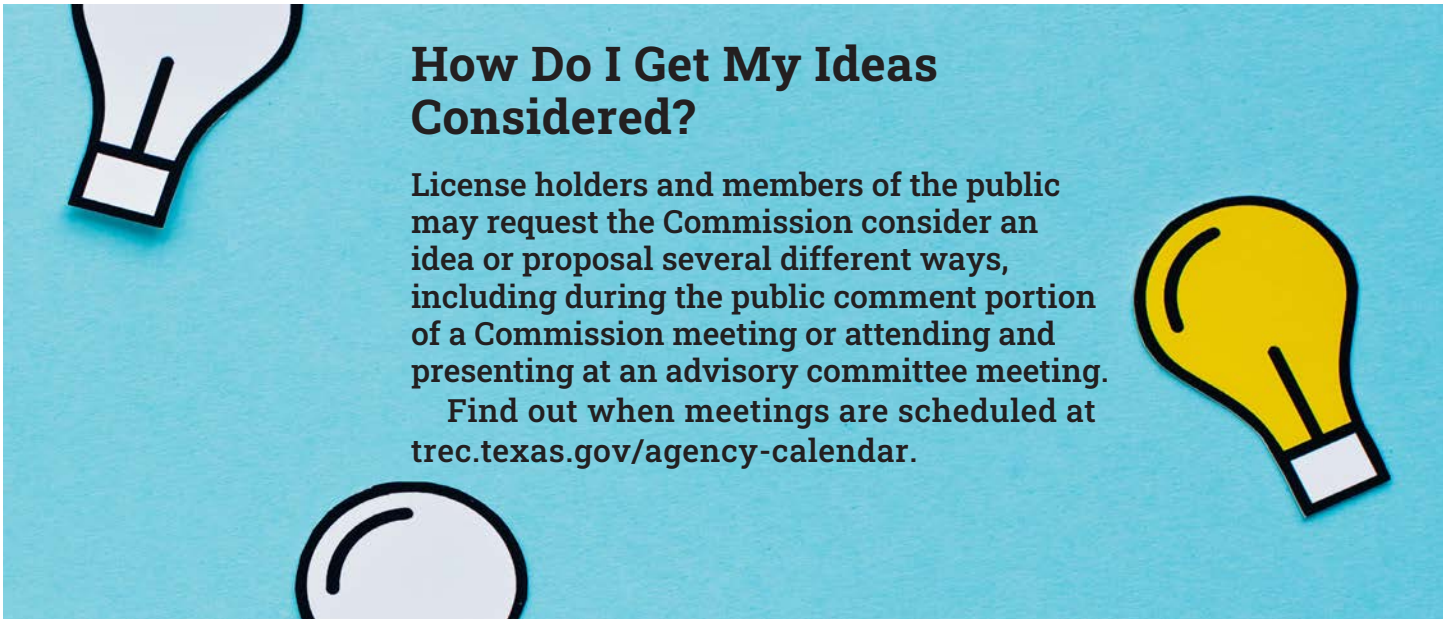
- **Duties:** ESAC regularly reviews curriculum standards, course content requirements, and instructor qualifications for qualifying and continuing education courses. It makes recommendations to the Commission to ensure license holder education meets the highest educational standards.
- **Members:** Seven real estate license holders, four education providers licensed by the Commission, and one public member.

Texas Real Estate Broker-Lawyer Committee (BLC)

- **Duties:** BLC drafts and revises contract forms promulgated by TREC.
- **Members:** Six real estate license holders appointed by the Commission, six attorney members appointed by the State Bar of Texas, and one public member appointed by the Governor's Office.

Texas Real Estate Inspector Committee (TREIC)

- **Duties:** TREIC provides recommendations to the Commission regarding the licensing, education, and regulation of inspectors in Texas to promote a high degree of service from the inspection industry and ensure the protection of the public.
- **Members:** Six real estate inspector license holders and three public members.



Rule Proposals and Rule Adoptions

When rule changes are recommended to the Commission, usually by an advisory committee or another Commission committee (like the Executive Committee or the Enforcement Committee), Commissioners vote at a public meeting whether changes should be proposed for public comment or need to be revised before formal proposal.

What is a Rule Proposal?

Commissioners review and discuss a rule change draft and then can vote for its proposal at a quarterly TREC meeting. After a proposal, a public comment period commences during which anyone can give their opinions on the proposal.

After the comment period closes, the committee that recommended the rule change or has the subject-matter expertise reviews all the comments and, as a result, may make changes to the proposed rules, decide to withdraw their recommendation, or leave the recommendation as originally presented.

What is a Rule Adoption?

Rule proposals come before rule adoptions. Rule adoptions also occur at TREC meetings. After the proposal process, the Commission reviews any comments received, along with any committee recommendations, and then votes whether to adopt those changes. Once adopted, there is an effective date for when a new rule or rule change must be followed. The rule recommendation, proposal, and adoption process can take many months because it is essential the Commission and committees receive and provide feedback. The process ensures all possible changes are examined for their potential implications on the practice of real estate and with consumer protection in mind.

Regulatory Compliance

The Regulatory Compliance Division of the Governor's Office independently reviews certain rules proposed by specific state licensing agencies—including TREC—that affect market competition to assess their consistency with state policy as articulated by the Texas Legislature in statute.

A rule affects market competition if it would create a barrier to market participation in the state or would result in higher prices or reduced competition for a product or service provided by or to a license holder in the state.

The division reviews and decides whether to approve or reject new rules, rule amendments, rule repeals, and rules the agency proposes to readopt or repeal after its Quadrennial Rule Review. TREC cannot adopt or implement a proposed rule until the division has approved the rule, or the agency has revised the rule according to the division's instructions.

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3 TREC Rules People Commonly Forget

Obligation to Respond Timely

TREC Rule 535.157, Obligation to Respond Timely, requires brokers and sales agents to respond to their client, a broker, or sales agent representing another party to a real estate transaction, or an unrepresented party to a real estate transaction within two calendar days. TREC Rule 535.2 requires brokers and delegated supervisors to respond to sponsored sales agents within two calendar days.

The rule language speaks specifically to a real estate transaction. So, if you are currently in the process of working with a client on a real estate transaction, this requirement to respond is triggered.

Real estate transactions happen 365 days a year. As a sales agent or broker, you should be sure to plan your time accordingly. There will likely be times when you need to respond on weekends or holidays, but only when an inquiry is tied to a real estate transaction.

Some best practices include reviewing your policies and procedures that may address time away or designating another license holder to manage your clients and pending transactions while you are out. If you go this route, ensure your backup is familiar with and has all the important details of the transaction, plus an understanding of the expectations surrounding your duties and theirs during this time.

Who Gets Paid?

Any compensation received must be paid to the agent's sponsoring broker, unless written consent has been given pursuant to TREC Rule 535.3, Compensation to or Paid by a Sales Agent. An example of this might arise is when a licensed sales agent shows a property listed by another brokerage for compensation or the expectation of compensation.

This rule states that a sales agent may only receive a commission or other valuable consideration with

- The written consent of the sales agent's sponsoring broker, or
- The written consent of the broker who sponsored the sales agent when the sales agent became entitled to the commission or other valuable consideration.

Additionally, a sales agent may not pay a commission or other valuable consideration to another person except with the written consent of the sales agent's sponsoring broker.

Keep In Touch

TREC Rule 535.21, Mailing Address and Other Contact Information, requires license holders to provide to the Commission a mailing address, phone number, and email address used for business. This includes updating your business contact information and associated broker identification that is displayed on the TREC website under the license holder search (more on those topics later!). License holders also have 10 days to update their contact information if it changes. Not doing so causes myriad problems, from not receiving important communications about your professional license to potential disciplinary actions.

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The Latest From the Texas Legislature

The 89th Texas Legislature made several changes affecting license holders, including broker education requirements, associated broker identification, contact information collection, and written buyer agreements. Here's what you should know for 2026 and beyond.

Broker Responsibility for All Brokers

As of January 1, 2026, all brokers are required to take the Broker Responsibility Course at a broker's license application and renewal, regardless of whether they intend to sponsor agents. There is no change to the requirement that anyone delegated as a supervisor must still take the course in accordance with TREC Rule 535.2.

This education-related change was a formal recommendation made by the Broker Responsibility Advisory Committee (BRAC) to ensure all brokers are knowledgeable about the expectations and requirements of this role. The decision to sponsor agents requires immense accountability, and having already taken the course will allow brokers to be nimble if they later choose to sponsor sales agents. Most important, Texas consumers benefit when brokers take the course on a regular basis. Ultimately, all license holders can benefit from taking this valuable course, as it informs sales agents what they should expect from their sponsoring broker.

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Business Contact Information

In 2023, the 88th Texas Legislature passed Senate Bill 510, making certain license holder contact information confidential by law. This information included the personal contact information of license holders as well email addresses associated with the license holder. TREC did not have the ability to discern whether the information it displayed on the website was personal or business, so TREC was required to remove contact information for license holders from public display. However, many people access TREC's License Holder Lookup to find and confirm contact information of license holders. Legislation passed during the 89th Texas Legislative Session gave TREC the authority to collect and publicly display real estate brokers' and sales agents' business contact information.

Real estate brokers and sales agents are required to provide TREC with their business addresses and business phone numbers. This business contact information will then be publicly displayed on TREC's website.

Brokers and sales agents can provide a P.O. Box or the brokerage's address as business contact information for public display.

License holders must keep all required contact information current with TREC. Not doing so can result in a TREC enforcement action against the license holder. Fortunately, TREC's licensing management system, TREC Real Estate and Appraiser License Management Portal (REALM Portal), provides a self-serve function to make changes 24 hours a day.

Associated Broker Identification on TREC's Website

Another legislative change for associated brokers is that they must provide TREC details of which brokers with whom they affiliate. The broker will have the opportunity to affirm the affiliation, but it is the responsibility of the associated brokers to update their profile in the REALM Portal. The TREC website will show which associated brokers affiliate with which brokerages on each individual profile. Another initiative of BRAC, the goal is to make it easier for consumers and license holders to contact an affiliated broker if there are issues with an associated broker.

Complaint Notification About Associated Brokers

What hasn't changed is that there are still only two real estate brokerage license types: brokers and sales agents. However, Senate Bill 1968 requires TREC to provide brokers a notice when a complaint is filed against any of their associated brokers. If you are a broker with associated brokers, you will only receive a notice that there is a complaint—which could be related to a consumer complaint or a background check issue—and no other information. Your brokerage is not automatically part of the complaint in the same way a sponsoring broker is in a complaint against a sales agent. You will not have access to the open complaint file, which is confidential under Section 1101.2051 of the Occupations Code. It is the responsibility of the broker to find out more information from the associated broker, including any notice of a complaint resolution or whether disciplinary action is issued. Brokerages wishing to receive notice of resolution or discipline could use their policies and procedures to address this requirement.

Licensure Exceptions for Certain Mineral and Energy Source Transactions

Senate Bill 1172 excepts certain mineral and other energy source transactions from regulation by TREC, as well as a person conducting a real estate transaction on behalf of a commercial signage entity (e.g., billboards). This means that generally, people such as landmen do not need to be licensed by TREC. The bill also exempts from licensure a limited partnership's (LP) general partner, a manager or member of an LLC, an

employee of the LP/LLC, or an employee of the:

- LP's general partner; or
- LLC's manager or managing member

in transactions for property being bought, sold, leased, or acquired by the LP/LLC.

No More Flood Notice Required for Temporary Residential and Short-Term Leases

Senate Bill 2349 excepts temporary residential leases and short-term leases from the obligation to provide the landlord notice related to flooding. TREC has updated the *Landlord's Floodplain and Flood Notice* and its two temporary residential lease agreements: the *Buyer's Temporary Residential Lease* and *Seller's Temporary Residential Lease*. The buyer's form is only intended to be used when the buyer will occupy the property for no more than 90 days prior to closing on the purchase contract. The seller's form is only intended to be used when a seller occupies the property for no more than 90 days after closing of the purchase contract.

Someone who negotiates water rights on behalf of another for compensation still needs a TREC license.

Condominium Owners' Associations Added to hoa.texas.gov

Senate Bill 711 amends the condominium owners' association (COA) statute to require that COAs file their management certificates with TREC at hoa.texas.gov like mandatory membership property owners' associations (POAs) governed by Chapter 209 of the Property Code have done since 2021. This will result in the ability for the public to search for both POA and COA management certificates in one place.

Purchase or Acquisition of an Interest in Real Property by Certain Aliens or Foreign Entities

Senate Bill 17 prohibits certain foreign individuals or entities from acquiring or purchasing property in Texas.

Right of a Purchaser to Terminate a Contract of Purchase and Sale of Real Property for Failure to Provide PID Notice

House Bill 2468 amends the remedy for failure to provide PID notice. The buyer can terminate for any reason no later than seven days after the seller fails to provide the notice, but only if the city/county filed a copy of the service plan with the county clerk as required before the date the contract was entered into.

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Chapter 2
Contract Form Basics

15 Broker-Lawyer Committee and TREC Contract Forms

17 License Holder Requirements Related to TREC Contract Forms

18 Filling in Blanks, Adding or Striking Language, and the Unauthorized Practice of Law

20 Seller's Disclosure

21 From the Case Files

22 Activity: Contract Roulette

25 From the Case Files: Contract Mishaps

Learning Objectives

After this chapter, you will be able to

- ✓ Know the makeup and purpose of the Texas Real Estate Broker-Lawyer Committee.
- ✓ Understand how forms are reviewed by the Texas Real Estate Broker-Lawyer Committee.
- ✓ Learn the difference between mandatory and voluntary TREC contract forms and to avoid the unauthorized practice of law under TREC Rule 537.11.
- ✓ Identify which contract forms are used in different transaction types.

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Broker-Lawyer Committee and TREC Contract Forms

The Texas Real Estate Broker-Lawyer Committee (BLC) is established by law under Chapter 1101 of the Texas Occupations Code. The BLC consists of six attorney members who are appointed by the State Bar of Texas, six members appointed by TREC, and one public member appointed by the Governor. Members serve six-year appointments, except for the public member who serves a two-year term.

The Texas Legislature has charged this committee with drafting and revising the TREC contract forms that are "capable of being standardized to expedite real estate transactions and minimize controversy." That means creating forms consumers can trust and license holders can use, ensuring consistency across all transactions. It also means that the TREC contract forms contain language resulting from any legislative changes that require language updates.

How are BLC Members Selected?

Broker Members

Licensed brokers can apply to serve on the committee when new seats become available. A selection committee made up of commissioners reviews each application, which usually also requires a resume and cover letter. The selection committee looks for broker members who understand the responsibilities of the BLC, the role of TREC contract forms in the industry, and how often the applicant reviews or uses the TREC contract forms on a day-to-day basis. The role of the broker members is to provide industry insight and practical feedback on current practices.

Attorney Members

The State Bar of Texas appoints attorneys it considers well-versed in the practice of real estate law and contract drafting. These attorneys come from different backgrounds and often provide a unique perspective, which can include farm and ranch transactional experience or even real estate litigation.

Public Member

The Texas Governor appoints a public member who represents the public interest and provides a different perspective on the contract forms and consumer protection than the other two member types who are actively engaged in real estate transactions.

The BLC's Process and Mission

The BLC meets at least quarterly to review the TREC contract forms and discuss any changes the group is considering making. The BLC also initiates smaller subcommittees composed of a few brokers and lawyers to tackle specific industry issues, such as the farm and ranch working group or disclosures working group. These subcommittees hold their own meetings to draft contract language changes as needed and then presents their suggestions to the entire BLC.

The BLC meetings often take many hours during which they meticulously review possible language changes with broker members providing a real-world broker perspective and the attorneys homing in on the legal implications of any changes.

Accessible Language

The BLC's process ensures TREC contracts are drafted with consumer-friendly terminology that balance the interests of both parties of a real estate transaction.

Recommendations and Rulemaking

TREC contract forms are tied to TREC rules, so any changes made to the TREC contract forms undergo the rulemaking process to allow for public comment. The BLC recommends changes, and the Commission votes whether to propose those changes and initiate the rulemaking process. Public comment submitted in response to proposed contract form changes is accepted and reviewed by the full committee in an open meeting during the rulemaking process.

TREC Forms Help You Avoid Practicing Law

License holders are prohibited from practicing law. That's where the BLC steps in, drafting forms in such a way that they can be used by license holders to facilitate real estate transactions without wading into the waters of practicing law.

Get to Know Your Redlines

Whenever there are proposed changes to contracts, TREC will issue "redline" versions of the forms to show what is being removed or added. Redline versions can be found on the TREC website.

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License Holder Requirements Related to TREC Contract Forms

TREC Rule 537.11 addresses license holder use of TREC contract forms and the unauthorized practice of law. License holders must be familiar with the requirements of this rule as it impacts their daily practice and outlines their restrictions.

Required Use of TREC Contract Forms and Exceptions

TREC Rule 537.11(a) provides that a license holder negotiating the sale, exchange, option, or lease of any interest in real property shall only use the TREC contract forms approved for mandatory use by the Commission.

The rule also provides a series of exceptions, which are listed in the rule. Some examples of those exceptions include the following:

- The license holder is functioning only as a principal and not as an agent.
- Transactions where the U.S. Government requires a different form.
- Transactions where a contract form has been prepared by the property owner or prepared by an attorney and required by a property owner.
- Transactions for which no contract form has been approved for mandatory use by the Commission, and the license holder uses a form prepared by an attorney licensed by this state, or a trade association in consultation with an attorney licensed by this state that contains certain details listed in the rule.
- Forms prepared by the BLC and approved by the Commission for voluntary use by license holders.

License holders should consult TREC Rule 537.11 to determine whether an exception exists for a specific real estate transaction.

Mandatory Versus Voluntary TREC Contract Forms

TREC rules indicate whether a TREC contract form is mandatory use or voluntary use. License holders can use this as a reference point should they have a question as to whether they are required to use the form.

The Commission further clarified these terms by providing a definition for both in TREC Rules 537.1(5) and (6). The definition for "mandatory use" provides that unless an exception applies under TREC Rule Section 537.11(a), a license holder must use the form. And as the phrase suggests, "voluntary use" means the license holder may—but is not required to—use the form.

Here's an example of two rules with mandatory use and voluntary use.

TREC Rule 537.22 Standard Contract Form TREC No. 11-9, *Addendum for "Back-Up" Contract*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 11-9 approved by the Commission in 2025 for mandatory use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts.

TREC Rule 537.64 Standard Contract Form TREC No. 57-0, *Non-Realty Items Addendum*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 57-0 approved by the Commission in 2011 for voluntary use when the parties need to convey items of personal property not already listed in Paragraph 2, Property, of the contracts.

Filling in Blanks, Adding or Striking Language, and the Unauthorized Practice of Law

TREC contract forms are standardized forms that allow license holders to facilitate a real estate transaction without practicing law. TREC Rule 537.11 directly links the TREC contract forms to the BLC's purpose of creating standardized forms. TREC Rule 537.11 specifically states it is not the unauthorized practice of law for a license holder to add informational items to a TREC contract form or, if specifically instructed in writing by a principal, to add language to or strike language from a TREC contract form. There are certain requirements listed in the rule for how these strikethroughs and additions must be made.

TREC rules address the unauthorized practice of law. TREC Rule 537.11 specifically states a license holder may not engage in the practice of law. It then goes on to list specific examples of what constitutes the unauthorized practice of law for license holders when using TREC contract forms or other forms authorized by TREC Rule 537.11. Examples include prohibitions against:

- Directly or indirectly giving legal advice
- Giving advice or opinions as to the legal effect of any contract forms or instruments which may affect the title to real estate
- Drafting or recommending language to be included in a contract form defining or affecting the rights or remedies of the principals of a real estate transaction.

Consult TREC Rule 537.11 for all the examples listed under this section.

Why TREC Forms Keep Evolving

In the legal world, there is no such thing as a static contract. Contracts are living documents in a perpetual state of change. TREC forms are often revised because of legislative changes. It is the responsibility of the BLC to regularly review contract forms and revise them as necessary. The good news is that the BLC drafts contract forms that generally work in many transactions.

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Contract Forms

I sent in suggested change to the Broker-Lawyer Committee that would address an issue we are seeing in my coastal city. Why did they refer to it as a "5% issue" and not make the change?

ANSWER: The "5% rule" is a guideline the committee generally follows. This means committee members discuss whether a change to a TREC contract form addresses an issue affecting a high percentage of transactions (think 95%) or a small percentage (think 5%). In this example, the license holder's idea might be a great one, but if it is specific to an issue related to the coast, it doesn't meet the threshold for changing forms affecting license holders across the state.

Does the Broker-Lawyer Committee *really* need to keep changing the contracts?

ANSWER: Changes in real estate brokerage practice and market demands can prompt revisions; however, the committee is mindful that any changes made must not be based solely on a "hot market" or vice versa.

BLC-recommended changes are typically released all at once (pending Commission approval) on an approximately two-year schedule. However, legislative and case law changes happen on their own schedule, which is why it might feel like the TREC contract forms are always changing.

Since we are talking about the contracts, does this course meet the three hours of contracts CE requirement to renew my license?

ANSWER: No, it does not. This section is intended to be an overview of how the TREC contract forms—which license holders and the public interact with daily—are drafted and revised.

TREC Rule 535.92 requires every license holder to complete three hours of real estate contracts coursework to renew a license. That requirement is intended to provide license holders with a deeper dive on the TREC contract forms, including any changes to the forms that may happen during the renewal period.

All license holders are required to be competent in TREC contract forms. This means brokers must ensure their sponsored sales agents are competent, and sales agents invest time in learning TREC contract forms, the rules surrounding use of the forms, and avoiding the unauthorized practice of law.

Seller's Disclosure

Fact or fiction?

All legally required seller's disclosures are found in the TREC *Seller's Disclosure Notice.*

Fiction!

The TREC *Seller's Disclosure Notice* contains the property-related disclosures sellers must make under Texas Property Code Section 5.008; however, there are also legally required seller disclosures within the TREC contract forms, including addenda. Here are some examples of legally required disclosures that are not found in the TREC *Seller's Disclosure Notice*.

Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards as Required by Federal Law

Federal law requires the disclosure of certain information related to lead-paint pursuant to the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. Section 4852d). Although there is a section on the TREC *Seller's Disclosure Notice* as to whether the seller is aware of lead paint, the notice that satisfies federal law is found in the TREC *Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards as Required by Federal Law*.

Addendum Containing Notice of Obligation to Pay Improvement District Assessment

This notice was created in response to legislation passed in 2021 amending the Texas Property Code Section 5.014 to include required seller's disclosure language regarding property located in a public improvement district.

Paragraph 6 of the TREC *One to Four Family Residential Contract (Resale)*

This paragraph contains several seller's disclosures that are not found on the TREC *Seller's Disclosure Notice* but that are required by law. For example, the language associated with the notice about water fluctuation levels required by Texas Property Code Section 5.019 is found in Paragraph 6(E)(10), while the disclosure required by Texas Property Code Section 5.205 related to transfer fees is found in Paragraph 6(E)(8).

Takeaways

The TREC contract forms contain many seller disclosures, but not all are found in the TREC *Seller's Disclosure Notice*. License holders' familiarity with the TREC contract forms and these disclosures ultimately benefits the consumer and enables the license holder to practice in a more competent manner.

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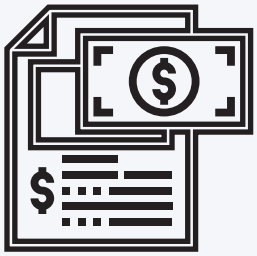
From the Case Files



Don't Forget the Conditions

It's another rebate rumble. The sales agent in this case said yes to his buyer getting some money back … but the lender said no. Here's what happened:

- A buyer executed a contract after being assured by his agent he would receive a credit towards closing costs.
- The rebate was not included in the contract documents.
- The lender later informed the buyer's broker that the rebate could only be applied towards closing costs, **but** the seller had already paid those costs.
- The lender also did not permit the buyer to accept the rebate outside the transaction.

So, the buyer did not receive the money as agreed upon with his agent and broker.

Keep in mind, when offering a rebate to a buyer, a license holder must disclose:

- A rebate is subject to lender approval.
- A lender may not allow a rebate in the transaction and prohibit the buyer from being paid outside the transaction.

And brokers, your written policies and procedures must ensure that your sponsored sales agents are competent to conduct their authorized activities, including the way rebates must be offered and administered to achieve fair notice to the buyer.

The sales agent's license was put on probated suspension for one year and he was ordered to pay $1,000 and take 30 hours of an agency law course.

Flooding? Where?

First thing's first: In short, it is a violation of the Texas Occupations Code to misrepresent a known significant defect or to fail to disclose a known defect to a potential buyer.Both happened here:

A seller did not disclose previous property flooding in the *Seller's Disclosure Notice*.

When the seller's broker first listed the property on the MLS, the broker did type "Had about inch of water downstairs with Harvey" in the "Agent's Remarks" section.

However, flooding information was not disclosed when the broker relisted the property five months later.

Parties closed on the property. After move-in, buyers discovered significant flooring issues because of the previous flood.

The broker was reprimanded and ordered to pay $2,500 and take 30 hours of a real estate law course.

CONTRACT ROULETTE

Read through each scenario. Check the boxes for which contract/addenda you would use for the scenario and explain why using the blank boxes at the bottom of the page.

SCENARIO 1

Buyer wants to submit a cash offer on a five-acre ranchette in a new development. The buyer is an equestrian and is excited that the property owners' association welcomes horses. The seller is a builder who just finished constructing a single-family home and installed several corrals that will convey with the sale of the property. The buyer intends to use funds from the sale of their current residence and a loan from their parents to fund the purchase of the property.

CONTRACT OPTIONS

- ☐ *One to Four Family Residential Contract (Resale)*
- ☐ *Farm and Ranch Contract*
- ☐ *New Home Contract (Complete Construction)*

ADDENDA OPTIONS

- ☐ *Third Party Financing Addendum*
- ☐ *Non-Realty Items Addendum*
- ☐ *Addendum for Sale of Other Property by Buyer*
- ☐ *Seller's Disclosure Notice*
- ☐ *Addendum for Property Subject to Mandatory Membership in a Property Owners Association*

CONTRACT	ADDENDA

CONTRACT

ROULETTE

SCENARIO 2

The executor of an estate is listing a property on which his childhood home once stood. The home was destroyed by a flood shortly after the executor's parents had moved into a retirement community, leaving only the foundation. The property is in a deed-restricted community and is taxed by a district that provides water services. The home had foundation issues when the executor was a child, but the executor thinks his parents fixed the foundation problems many years ago.

CONTRACT OPTIONS

- ☐ *One to Four Family Residential Contract (Resale)*
- ☐ *Unimproved Property Contract*

ADDENDA OPTIONS

- ☐ *Notice to Purchaser of Special Taxing or Assessment District*
- ☐ *Addendum Containing Notice of Obligation to Pay Improvement District Assessment*
- ☐ *Addendum for Property Subject to Mandatory Membership in a Property Owners Association*
- ☐ *Seller's Disclosure Notice*

CONTRACT	ADDENDA

CONTRACT

ROULETTE

SCENARIO 3

Buyer is interested in a new development near the Gulf Coast. The development consists of single-family homes that are part of a condominium regime, and the developer anticipates construction of the homes will be completed in six months. The buyer anticipates paying cash but wants to leave open the possibility of financing if interest rates drop by the time of closing. While confident the home is a good financial investment, the buyer wants to ensure the property's value is at least the amount of the sales price.

CONTRACT OPTIONS

- ☐ *New Home Contract (Incomplete Construction)*
- ☐ *New Home Contract (Completed Construction)*
- ☐ *Residential Condominium Contract (Resale)*

ADDENDA OPTIONS

- ☐ *Addendum Concerning Right to Terminate Due to Lender's Appraisal*
- ☐ *Third Party Financing Addendum*
- ☐ *Addendum for Property Subject to Mandatory Membership in a Property Owners Association*

CONTRACT	ADDENDA

From the Case Files

Promises, Promises

He simply didn't put his money where his mouth (and writing) is. The sales agent in this case fulfilled a sale but left a promised rebate dead in the water.

The agent stated in writing that he would refund his buyer 3% of the 5% sales commission if the buyer made the house purchase.

Well, the buyer **did** buy, but the agent's agreement wasn't put into action, despite the agent's sponsoring broker approving the rebate and including it on a disbursement authorization form submitted to the title company.

What Went Wrong

- The rebate information was not reflected on the HUD-1 settlement statement.
- The agent failed to contact the title company to correct the error.
- The broker failed to supervise her agent and ensure the buyer's rebate was included in the settlement statement.

The title company issued a check to the broker for the full 5% commission. And as of the closing of this case, the buyer has not been paid what was promised and is pursuing a civil cause of action.

The Penalties

- The broker was ordered to pay $2,000.
- The agent's license was put under a two-year probated suspension, and he was ordered to pay $2,000 and take 30 hours of an agency law course.

Takeaways for Sales Agents and Brokers

- Brokers of sponsored sales agents must maintain policies and procedures that ensure they are advised of the scope of their authorized activities, and that they are competent to conduct them.
- Complete information regarding a rebate promised to a buyer must be referenced in the final HUD settlement, so all involved with the contract (including brokers, lenders, title companies, or governmental agencies) are aware of it and the terms under which it may be received. Document any money received or transferred to a third party.
- Ensure you have written policies and procedures addressing trust money.
- Have regular trainings for your sponsored sales agents about your policies and procedures and set clear expectations.

From the Case Files

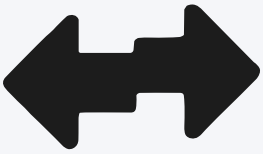
A Costly Waste of Time

The sales agent in this case racked up quite the enforcement bill. She kept the $56,800 her clients gave her in a personal business account. This money was for the purchase of a property. Unbeknownst to her clients, she submitted a contract on their behalf under a different buyer's name. She later terminated the contract without informing her clients.

After discovering the property was relisted, the clients demanded a refund from the agent. Their money was returned.

License holders should never mix money that belongs to another person with their own, and trust money should go to a broker or title company.

The agent's license was put under a four-year probated suspension. She was also ordered to pay $3,000 and take 30 hours of a real estate finance course.



Don't Let This Switcheroo Happen to You

Protecting your client starts with precision on paper. In this case, a sales agent representing a buyer drafted a purchase contract with the option fee and earnest money amounts accidentally flipped. Instead of the intended $500 option fee and $3,750 earnest money, the contract showed $3,750 as the option fee and $500 as earnest money. Both parties signed the contract with the error in place.

The lender later flagged the mistake, and while the agent attempted to correct it with an amendment, the seller refused. The buyer terminated the contract and asked for the $3,750 back as earnest money, but the seller only offered $500—per the written terms. It wasn't until six months later, and after the buyer hired an attorney, that the seller finally released the $3,750.

The agent has since acknowledged her duty to protect her client's interests and to use greater care when preparing contracts. TREC issued a $500 penalty and formal reprimand, underscoring the importance of being meticulous when drafting or reviewing contract terms.

Chapter 3
Water Rights

27 Water Rights 101

How is Water Categorized Under State Law?

28 Who Owns the Water?

29 Who Regulates Water?

31 Know What you Don't Know

Learning Objectives

After this chapter, you will be able to

- ✓ Identify the types of water under state law.
- ✓ Understand the difference between groundwater and surface water.
- ✓ Recall the basics of water regulation in the state.
- ✓ Recognize a license holder's role in real estate transactions involving water rights.

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Water Rights 101

Water rights are becoming increasingly important in rural transactions throughout Texas. Water rights refer to the legal entitlements that govern the use of water resources. Texas property owners need to understand the very basics of Texas water laws to identify any rights and legal restrictions regarding water use.

Water laws are codified in Chapter 11 of the Texas Water Code, entitled Water Rights. In June 2025, the Texas Supreme Court in *Cactus Water Services, LLC v. COG Operating LLC* issued a key opinion on water rights which defines water rights in a particular context and will influence ownership rights in the future.

This section is a high-level overview of water in Texas.

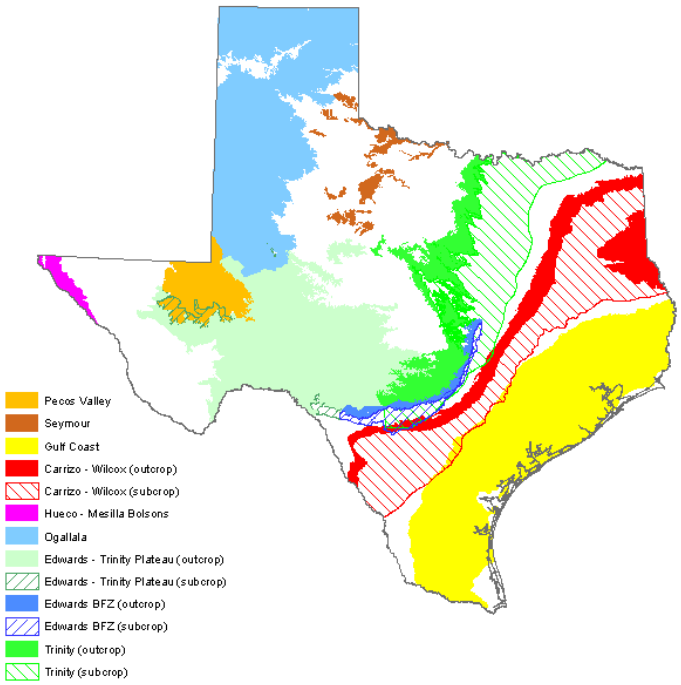
How is Water Categorized Under State Law?

Groundwater

The Texas Water Code defines groundwater as "water percolating below the surface of the earth." The majority of groundwater is held in the state's nine major aquifers; however, depending on where you are in the state, a number of smaller aquifers might be present at different depths.

Aquifers are layers of underground rock, sand, or gravel saturated with groundwater. The definition of groundwater includes a vast area that could mean water just below the surface at a depth of 50 feet to depths of 4,000 feet. Depending on where you are in Texas, a property may have multiple aquifers below the surface, an aquifer no longer saturated with water, rock formations that prohibit drilling to access the water, or an aquifer with water not suitable for certain usage, like drinking.

Major Aquifers of Texas



This map and many others are available from the Texas Water Development Board's website at twdb.texas.gov.

Surface Water

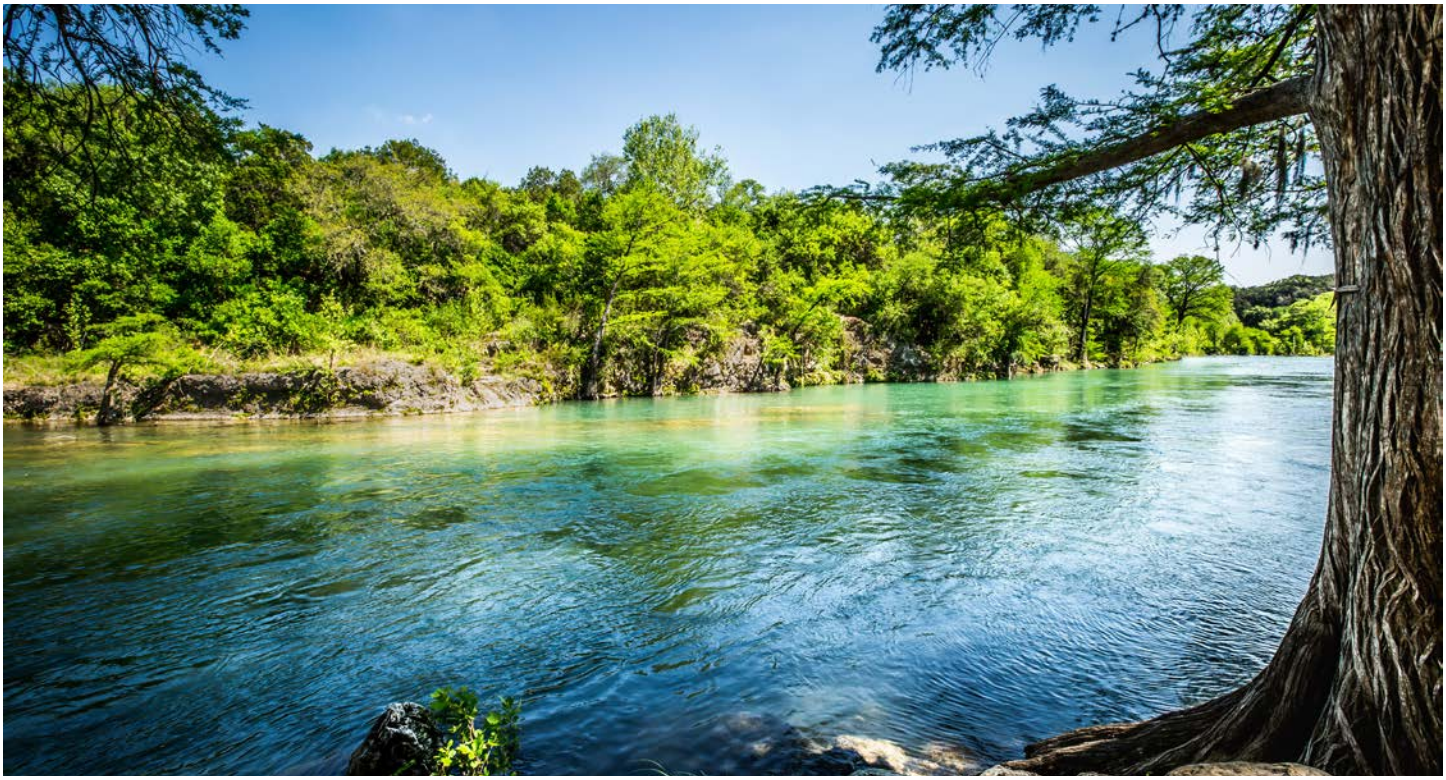
The definition of surface water is a bit more nuanced. It includes the following:

- The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and every bay or arm of the gulf.
- The stormwater, floodwater, and rainwater of every river, natural stream, and watercourse in the state.
- Water that is imported from any source outside the boundaries of the state for use in the state, and that is transported through the bed and banks of any navigable stream within the state, or by utilizing any facilities owned or operated by the state.

Diffused Surface Water

A subcategory of surface water, which includes stormwater, drainage water, or surface runoff before it reaches a watercourse.

Map from Texas Water Development Board (TWDB)



Who Owns the Water?

Groundwater has historically thought to be the property of the landowner. Today, in most areas of the state where groundwater is readily available, the landowner typically still holds rights to groundwater.

In the last few decades, ownership and use is being contested in courts and withheld from conveyance in some real estate transactions in parts of the state. By example, some sellers are attempting to legally hold rights to aquifers at certain depths, or reserve the rights to the water should the groundwater ever be used for a commercial purpose; others are holding some water so it can be sold some day in the future for subdivision development or to intermediaries who lease water rights and then sell to local governments. Where the property is located and the availability of water affects the transactions.

As a refresher, property ownership is in two parts:

- The surface estate
- The mineral estate

You likely think of mineral estate as oil and gas. In 2025, the Texas Supreme Court issued an opinion, also called common law, that found the water produced along with the oil or gas is part of the mineral estate. The Court clarified that water produced by the oil and gas operator is not owned by the surface estate. The mineral estate has the right to contract for the use of the groundwater.

Surface water in Texas is owned by the state and held in trust for the citizens of the state. The state grants the right to use this water to different people, such as farmers or ranchers, cities, industries, business, and other public and private interests.

Landowners can use surface water for certain purposes, like domestic and livestock use, without a permit. Surface water use for irrigation or commercial applications will require a permit.

Diffused surface water is the property of the landowner until it reaches a watercourse, meaning it can be harvested if the water is captured before it reaches a material watercourse. Two examples of this include rainwater harvesting into the soil or capture and storage of drainage water, so long as it is done before it reaches a natural watercourse.

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Who Regulates Water?

In most cases, the Texas Commission on Environmental Quality (TCEQ) regulates the use of surface water. Anyone who wants to use surface water in Texas must first get permission from the state, unless they are using the water for one of several "exempt uses" under the Texas Water Code.

Some exemptions include

- Domestic and livestock use
- Wildlife management
- Emergencies, like wildfires
- Other specified uses.

Obtaining a permit from TCEQ can be a lengthy process and there is no guarantee a permit will be granted. This can have significant impact on a real estate transaction depending on the circumstances at issue.

Many areas in Texas also have Groundwater Conservation Districts (GCDs). These districts manage groundwater usage. Currently, there are 98 GCDs in Texas. These districts have the authority to implement well-spacing requirements, require permits/registrations for wells within jurisdictional limits, and monitor water levels. GCDs often track water table levels and may impose restrictions during droughts (which we often see in Texas) or periods of low water availability.

Landowners with private water wells are not required to register their water wells with the state unless their property lies within the jurisdiction of a GCD. Although, it is important to note that all private well owners must submit a State of Texas Water Well Report when a new well is drilled.

Is Groundwater a Private Property Right?

Yes, groundwater is considered a private property right, meaning ownership of groundwater is tied to the land unless explicitly severed in a property transaction. It is becoming more common for landowners to separate water rights during the sale of the surface.

Texas Water Development Board (TWDB) 2024 State Flood Plan

In 2019, the Texas Legislature passed Senate Bill 8 directing the creation of the first-ever state flood plan for Texas. The state flood plan brings together the findings of the 15 river-basin-based regional flood plans and makes legislative and floodplain management recommendations to guide state, regional, and local flood control policy. The 2024 State Flood Plan is the most recent version at the time of print. This comprehensive plan maps flood zones throughout the state and can be easily accessed from the TWDB website. The regional and state flood planning processes recur in five-year cycles.

The plan is intended to identify who and what might be exposed to flooding; identify the state's major flood risk reduction infrastructure; consider existing floodplain management practices or lack thereof; and identify and recommend flood risk reduction solutions across the state. The recommended flood risk reduction solutions include flood management evaluation, flood mitigation projects, and flood management strategies.

Do License Holders Need to be Experts in Water Law and Water Rights?

No. License holders do not need to be experts in Texas water rights. However, license holders with a solid understanding of the basics of water rights in Texas ultimately benefits the consumer and may go a long way in ensuring competency.

Texas Flood Plan Summary Map

This map displays the 15 Regional Flood Planning Groups identified by the Texas Water Development Board (TWDB). View an interactive map at texasstatefloodplan.org/overview.

Know What You Don't Know

As a license holder, you must know how to handle questions regarding water rights. Water rights are ever-changing, and the body of law is a specialty amongst attorneys. To avoid the unauthorized practice of law and best protect your client's interest, make sure you are prepared to assist your client and refer your client to an attorney when appropriate.

Below are some important tips and strategies when it comes to water rights and real estate.

- Do not make assumptions about a property's water rights.
- If you have a client who lets you know his or her intention as it relates to water usage, don't assume such use is allowed.
- Know what disclosures related to water are required under the TREC contract forms.
- Advise your clients to consult with an attorney on questions related to water rights. Doing so makes sure your client is well-informed and keeps you in your lane of practicing brokerage services and ensuring your client receives the guidance he or she needs.
- Remember, contacting an attorney on behalf of your client and then relaying information to your client is still the unauthorized practice of law.

TWDB Flood Plan Map 2024; texasstatefloodplan.org/overview

Chapter 4
Fair Housing

33 Why do Fair Housing Laws Exist?

36 Fair Housing Complaint Trends

37 Real-World Examples of Fair Housing Violations

39 What is Steering When Showing Properties?

Fair Housing and Marketing Prohibitions

9 Fair Housing Don'ts

40 Fair Housing Best Practices

41 Fair Housing and Disability Rights

Learning Objectives

After this chapter, you will be able to

- ✓ Understand the impact of discrimination in real estate given the history of civil rights laws, current investigations, and trends.
- ✓ Identify federal, state, and local fair housing laws.
- ✓ Be familiar with the requirements of the Fair Housing Act, TREC Rule 531.19, and Section 1101.652(b)(32).
- ✓ Describe steering and strategies to avoid it.

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Why Do Fair Housing Laws Exist?

The United States has a long, complicated history with property rights. Discriminatory policies and practices have prohibited property ownership for centuries, dating back to the 1700s against slaves and the 1800s against women. There was legislation in place that denied property rights to Native Americans and certain individuals of African, Asian, and Latin American decent. After the Civil War, the Civil Rights Act of 1866 was passed, but it did not erase the impact of decades of denying certain classes of people the right to own and control their own property.

Redlining

Laws were implemented allowing zoning by race. The Federal Home Owner's Corporation, a U.S. government agency, created red, yellow, and green color-coded maps indicating risk levels for lenders. Areas highlighted in red were considered high-risk lending areas, generally with high minority populations. You may have heard of this practice as redlining.

Deed Restrictions

After World War II, there was a rush to build housing in areas right outside of cities, further segregating populations around the country. Many of these developments had restrictions in their covenants that prohibited people of color from living within the developments. It was not until 1948 that restrictive deed covenants were deemed unenforceable. The impact of redlining and restrictive deed covenants affected families for years to come.

History of Civil Rights Laws Impacting Real Estate

The Civil Rights Act of 1968

The Civil Rights Act of 1968, commonly known as the Fair Housing Act, was passed to protect consumers from discrimination in mortgage lending, leasing, buying, and selling a home, and engaging in activities related to housing.

Congress had considered the bill from 1966 through 1967. But in 1968, after the assassination of Martin Luther King, Jr., President Lyndon B. Johnson urged Congress to act, resulting in the passage of the Civil Rights Act of 1968.

The Fair Housing Act prohibits discrimination in the sale, lease, or financing of housing based on race, color, religion, and national origin.

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Amendments in 1974 added sex as a protected class, followed by amendments in 1988 adding protections based upon familial status and disabilities.

Jones v. Alfred H. Mayer Co.

The groundbreaking Supreme Court decision in the case of *Jones v. Alfred H. Mayer Co.* in 1968 confirmed the government could regulate the sale of public and private property, making racial discrimination illegal.

Why Does Fair Housing Matter for You?

Understanding the history of fair housing laws is important for license holders because these laws were established to prevent discrimination and provide equal opportunity for everyone. Fair housing laws continue to evolve. This understanding complements the fiduciary responsibility license holders owe their clients and the duties owed to customers and the public. It is crucial that you follow and promote fair housing laws. While many of the formal restrictions on an individual's property rights are no longer, these practices have literally drawn maps and condoned land development in ways that still put people at a disadvantage.

National Association of Realtors (NAR) Code of Ethics Requirements Related to Discriminatory Practices

Members of the Realtor organization must also consider the NAR Code of Ethics and Standards of Practice. Article 10 says Realtors shall not deny equal professional services to any person or be parties to any plan to discriminate for reasons of race, color, religion, sex, disability, familial status, and national origin.

In 2025, NAR approved a series of recommendations from NAR's Professional Standards Committee that Standard of Practice 10-5 says Realtors, in their capacity as real estate professionals, in association with their

QUIZ: Fair Housing Law Origins

1. What year was the first civil rights legislation passed in the United States?

a. 1866
b. 1968
c. 1974
d. 1988

2. What is another name for the Civil Rights Act of 1968?

a. Americans with Disabilities Act (ADA)
b. Fair Housing Act (FHA)
c. Housing Affordability Act (HAA)
d. Consumer Protection Act (CPA)

3. What protected class was added to the Civil Rights Act in 1974?

a. Race
b. Religion
c. National origin
d. Sex

4. In 1988, the most recent amendment to the Civil Rights Act was passed. What two protected categories were added?

a. Religion and national origin
b. Gender preference and religion
c. Familial status and individuals with disabilities
d. Race and color

1. a. 2. b. 3. d. 4. c.

real estate businesses, or in their real estate-related activities, shall not harass any person or persons based on race, color, religion, sex, disability, familial status, and national origin. As used in the current Code of Ethics (June 2025), harassment is unwelcome behavior directed at an individual or group based on one or more of the above protected characteristics where the purpose or effect of the behavior is to create a hostile, abusive, or intimidating environment which adversely affects their ability to access equal professional services or employment opportunities.

NAR's website has many fair housing resources available, including recent court cases, videos, and statistics. These resources can provide more detail on the topics discussed in this chapter and provide more background to the NAR Code of Ethics Requirements Related to Discriminatory Practices. This information can be found at nar.realtor/fair-housing.

NAR has also compiled its fair housing resources into one page that may serves as a useful reference point for those digging in deeper to the NAR Code of Ethics. This compilation can be found at nar.realtor/fair-housing/fair-housing-compiled-resources.

TREC Requirements Related to Discriminatory Practices

TREC has requirements regarding discriminatory practices. Section 1101.652(b)(32) of the Texas Occupations Code authorizes TREC to take disciplinary action if the license holder, while acting as a broker or sales agent, discriminates against an owner, potential buyer, landlord, or potential tenant on the basis of race, color, religion, sex, disability, familial status, national origin, or ancestry, including directing a prospective buyer or tenant interested in equivalent properties to a different area based on race, color, religion, sex, disability, familial status, national origin, or ancestry of the potential owner or tenant.

The statute above is reflected in TREC rules under Chapter 531, Canons of Professional Ethics and Conduct, which states in Section 531.19, Discriminatory Practices:

(a) No real estate license holder shall inquire about, respond to, or facilitate inquiries about, or make a disclosure of an owner, previous or current occupant, potential purchaser, lessor, or potential lessee of real property which indicates or is intended to indicate any preference, limitation, or discrimination based on the following:

(1) race;

(2) color;

(3) religion;

(4) sex;

(5) national origin;

(6) ancestry;

(7) familial status; or

(8) disability.

(b) For the purpose of this section, disability includes AIDS, HIV-related illnesses, or HIV infection as defined by the Centers for Disease Control of the United States Public Health Service.

Does TREC Enforce the National Association of Realtors (NAR) Code of Ethics?

TREC is the government agency that regulates real estate license holders in Texas. When a license holder violates TREC rules or state laws, TREC can take disciplinary action that can include license suspension or revocation.

The NAR Code of Ethics is enforced statewide by Texas Realtors, the voluntary membership organization for real estate license holders. TREC does not enforce the NAR Code of Ethics and complaints should go to Texas Realtors.

Fair Housing Complaint Trends

There were 440 harassment complaints on the basis of disability, 316 harassment complaints on the basis of race, 262 harassment complaints on the basis of sex, 102 harassment complaints on the basis of familial status, and 97 harassment complaints on the basis of color. While almost every protected basis saw an increase in harassment cases from 2022 to 2023, a few bases saw dramatic increases in complaints. Harassment complaints on the basis of color saw an increase of 470.59 percent, and harassment complaints on the basis of race saw an increase of 114.97 percent.

Fair Housing Complaint Trends Nationally

Each year the National Fair Housing Alliance releases its *Fair Housing Trends Report*. This report can be used as a reference point for license holders to see fair housing complaint trends nationally and by state. Important highlights from the most recent report available at publication follow.

Nationwide Increase in Fair Housing Complaints Received

There were 34,150 fair housing complaints received in 2023 by private nonprofit fair housing organizations, the U.S. Department of Housing and Urban Development (HUD), Fair Housing Assistance Program (FHAP) agencies (state and local agencies that administer fair housing laws that HUD has determined to be substantially equivalent to the Fair Housing Act), and the Department of Justice (DOJ). This is an increase of about 1,100 from complaints registered in 2022. It is also the highest number of fair housing complaints recorded since the alliance began producing its *Fair Housing Trends Report* in the mid-1990s. Further, there has been nearly a 9% increase in fair housing complaints since 2020. Private nonprofit fair housing organizations processed 75.52% of complaints, a 5.68% increase from the previous year.

Which Type of Discrimination is the Most Reported?

Discrimination based on disability accounted for the majority (52.61%) of complaints filed with fair housing organizations, HUD, and FHAP agencies.

What About Other Types of Complaints Filed?

There were 1,521 complaints of harassment reported last year, an increase of 66.23%. There were 824 complaints based on color reported last year; this represents an increase of 35.3%.

Chart reprinted with permission from the National Fair Housing Alliance®

Where Does Texas Fall in Terms of Fair Housing Complaints Filed?

Complaints in Texas roughly mirror national standards in terms of discrimination type.

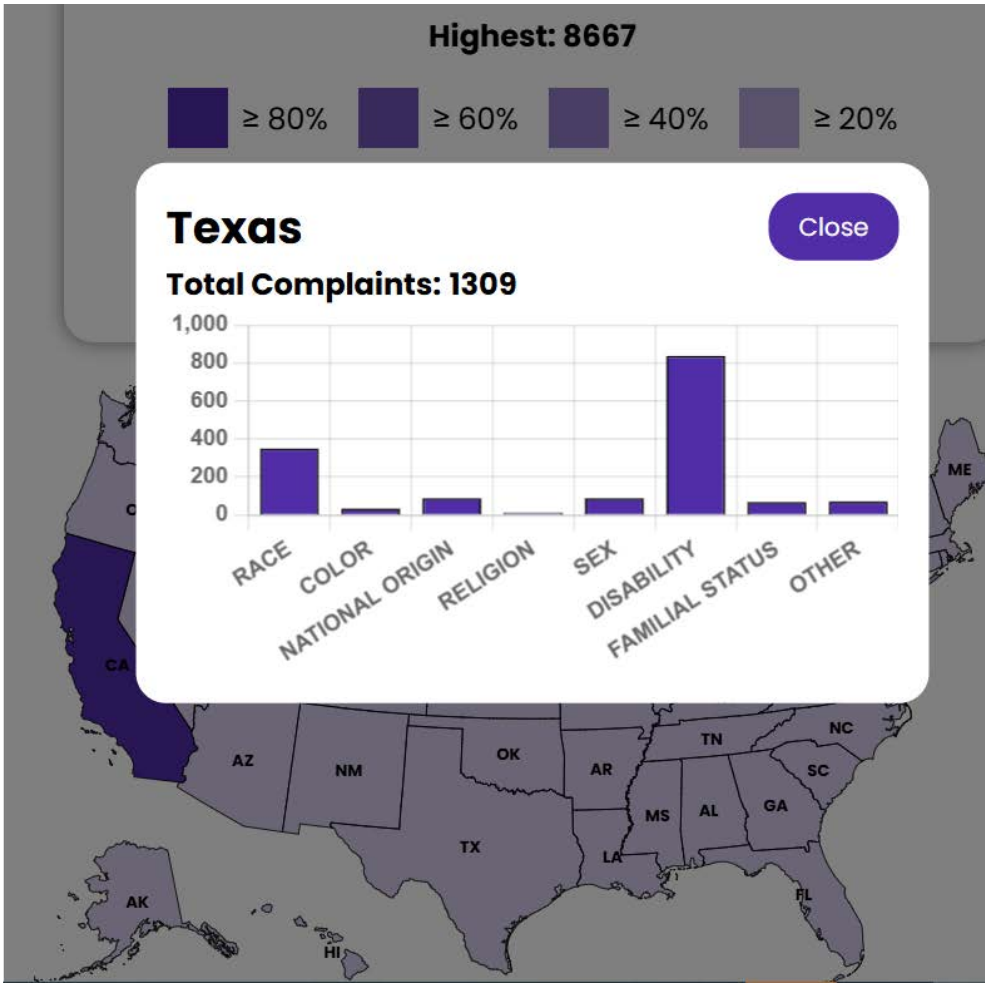
Texas is a state that has a low number of complaints, with 1,309 complaints filed in 2024. While that is good news, there are violations that are never reported for fear of retaliation, particularly in rental scenarios in which the victim of a fair housing violation fears retaliation from his or her landlord.

What These Data Show and Their Importance

Overall, the 2024 data indicate that fair housing complaints continue to rise nationally. Disability-based discrimination complaints make up the largest percentage of those complaints.

License holders who are equipped with an understanding of fair housing complaints and an understanding of fair housing laws serve as the front line in protecting the consumer from fair housing violations.

Don't think about fair housing as "a way I can get into trouble." Instead, think about it as "a way that can I help protect real estate consumers in the State of Texas."



Real-World Examples of Fair Housing Violations

United States v. City National Bank

- **Complaint:** The DOJ alleged that City National Bank engaged in unlawful redlining in Los Angeles by avoiding providing credit services to majority-Black and Hispanic neighborhoods because of the race, color, and national origin of the people living in those neighborhoods. The complaint also alleged that while City National Bank avoided providing mortgage lending services to majority-Black and Hispanic neighborhoods, other banks received more than six times as many applications in the same neighborhoods.
- **Resolution:** The consent order requires the bank to invest at least $29.5 million in a loan subsidy fund to increase credit opportunities for majority-Black and Hispanic neighborhoods in Los Angeles County and will also open a new full-service branch in a majority-Black and Hispanic neighborhood.

Chart reprinted with permission from the National Fair Housing Alliance®

United States v. SSM Properties, LLC

- **Complaint:** The DOJ alleged that the owners and manager of three apartment complexes in Pearl, Mississippi, discriminated based on race in violation of the Fair Housing Act by steering Black testers towards one complex, and falsely representing that the other two complexes did not have vacancies.
- **Resolution:** The consent decree requires defendants to pay $110,000 in damages and attorneys' fees and $13,000 in civil penalties.

United States v. LJLD, LLC (Bridgewater)

- **Complaint:** The DOJ alleged the owners, developers, and builders of the Bridgewater Residences Apartments in St. Louis violated the accessibility requirements of the Fair Housing Act and the Americans with Disabilities Act in the design and construction of a complex.
- **Resolution:** The settlement agreement states the defendants will retrofit public and common use areas of the complex, as well as multifamily units covered by the law to make them accessible to people with disabilities. They will also pay $18,500 into a settlement fund to compensate individuals who were harmed.

The DOJ filed or settled five cases challenging the inaccessible design and construction of residential properties in fiscal year 2023.

Exceptions to the Fair Housing Act

The Fair Housing Act applies to most, but not all, types of housing. Some exceptions to the Fair Housing Act are as follows:

- **Owner-occupied buildings** with four or fewer units.
- **Single-family homes rented without using a broker.** There are caveats to this, but the broker part is what you should note.
- **Religious organizations.** This is complicated, so if you are doing work on behalf of a religious organization, know the limits of this exception.
- **Private clubs and housing** for the elderly.

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What is Steering When Showing Properties?

Steering in real estate is about showing properties—or not showing properties—based on race, color, national origin, religion, sex, familial status, or disability. It includes directing clients to view property in certain neighborhoods or not providing information on housing available in certain areas because of a particular status.

Steering is a violation of fair housing laws. License holders must keep their biases in check and not make assumptions based on stereotypes. Consumers must be allowed to choose which communities and neighborhoods they want to live in. Steering might be something that isn't intentional, but you must always be intentional in your work.

Fair Housing Advertising and Marketing Prohibitions

Under the Fair Housing Act, it is illegal for anyone to advertise or make any statement that indicates a limitation or preference based on race, religion, color, sex, national origin, disability, or familial status. This prohibition against discriminatory advertising applies to all housing, including single-family and owner-occupied housing that is otherwise exempt from the Texas Fair Housing Act.

Did you notice that we said it is illegal for anyone to do these things? By anyone, we (and the government) mean anyone. While there are certain carve outs for certain types of properties or transactions, this prohibition applies to all, including owner-occupied buildings and single-family residences.

9 Fair Housing Don'ts

As a license holder, you have a lot on your to-do list. But this don'ts list will keep you out of fair housing hot water. Under the federal Fair Housing Act and Texas Fair Housing Act, no one may take any of the following actions in the sale and rental of housing based on race, color, religion, sex, national origin, disability, or familial status.

1. **Don't refuse to rent or sell housing.**
2. **Don't refuse to negotiate for housing.**
3. **Don't advertise housing only to preferred groups of people.**
4. **Don't show apartments or homes exclusively in certain neighborhoods.**
5. **Don't say that housing is unavailable for inspection, sale, or rental when in fact it is available.**
6. **Don't set different terms, conditions, or privileges for sale or rental of a dwelling.**
7. **Don't provide different housing services or facilities.**
8. **Don't deny access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.**
9. **Don't refuse to make certain modifications or accommodations for people with disabilities.**

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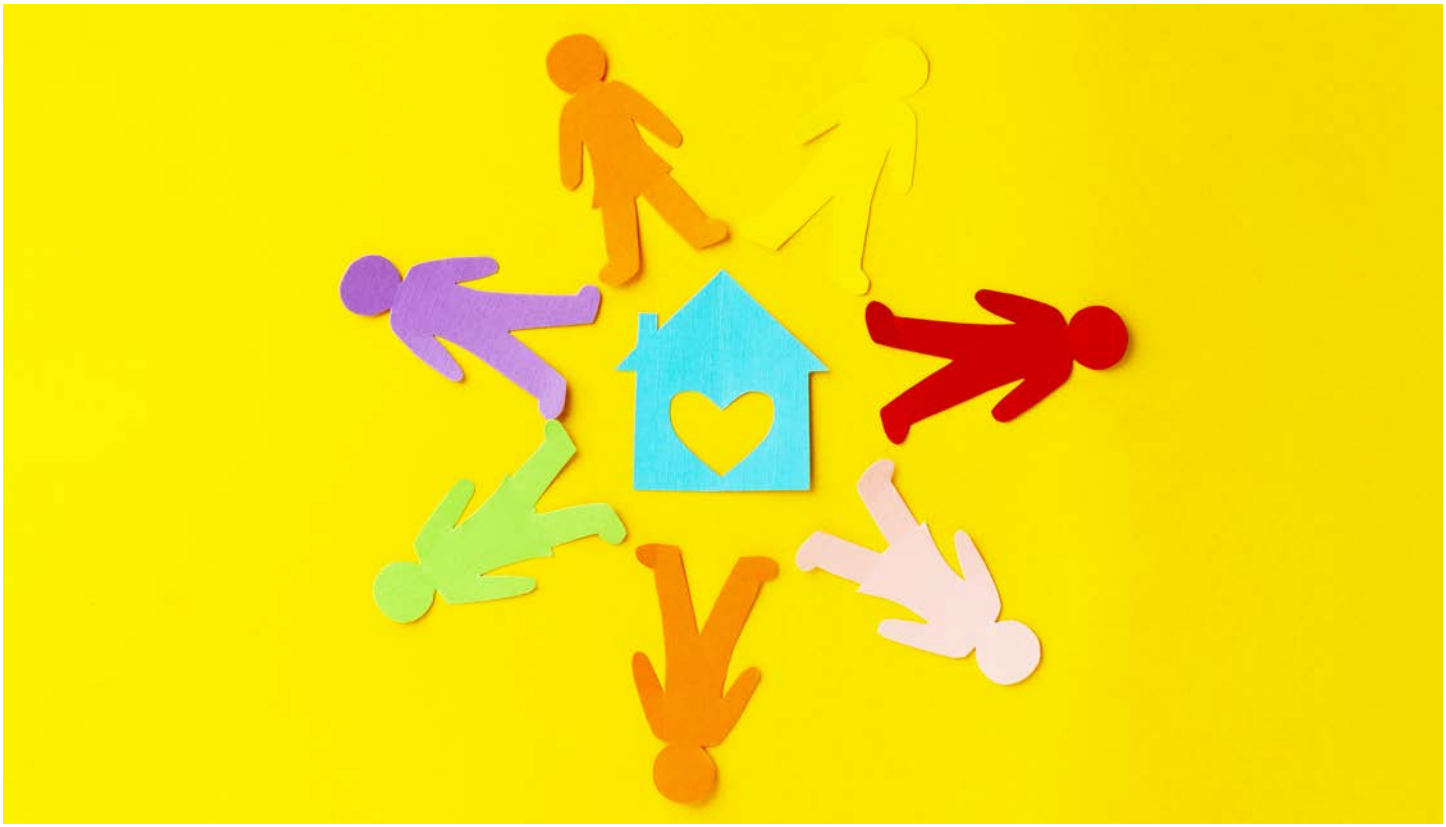

Fair Housing Best Practices

Understand your responsibilities as a license holder under federal and state fair housing laws. This book contains a lot of information, but there are also a lot of resources and training modules available online through HUD, the Texas Workforce Commission (TWC), and Texas Department of Housing and Community Affairs (TDHCA) that go into more detail. You can learn about fair housing in every area of real estate.

Provide your sponsored sales agents training about fair housing. If you are a broker, it is your duty to ensure your sponsored sales agents are current on real estate laws and regulations. It makes your sponsored sales agents better at what they do and more confident in identifying fair housing issues that may affect your clients.

Don't assume you know which housing choice best "fits" your client. These assumptions are often based on their disability, familial status, or other protected statuses. Give your clients all the information about all the available properties that meet their stated criteria.

Bonus tip: Focus on a client's budget and not personal assumptions on where you believe they should live. Find housing options that meet the budget and any other requested criteria.

Be mindful of sharing your opinion instead of facts, especially descriptions of neighborhoods, schools, or crime.

Don't be afraid to say you cannot answer certain questions. You are not allowed to answer questions like, "What kind of people live in this neighborhood?" because of fair housing laws. That is not a breach of your fiduciary duty—you are following the law.

Understand the difference between a request for reasonable accommodation and reasonable modification. Having that knowledge will help you help your client.

Make a difference! Commit to treating all your clients and parties to a transaction fairly. Do not assume that you "don't discriminate," so therefore you don't need to be worried about fair housing.

Teach those around you. A license holder committed to doing the right thing under fair housing and actively working to teach the real estate community about fair housing is a big step in the right direction.

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Fair Housing and Disability Rights

The Fair Housing Act prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, and familial status. You may have missed the "rental" component before, but it is crucial that license holders engaging in leasing and property management understand rental properties are governed by the Fair Housing Act.

If you don't understand these concepts and how they apply in the rental market, you could be on a dangerous path and ultimately harm consumers.

Even if leasing and property management is not your area of practice, make sure you pay close attention. You never know when your area of practice is going to change. Plus, being knowledgeable in fair housing in any type of brokerage activity will only make you a better license holder who can spot discrimination and speak up!

Two separate laws provide rights for people with disabilities: The Americans with Disabilities Act (ADA) and the state and federal fair housing acts. This section will focus on the Fair Housing Act because it applies to private property.

What is a Disability?

Under the Fair Housing Act, a disability means a physical or mental impairment which substantially limits one or more of a person's major life activities, a record of the impairment, or being regarded as having an impairment.

What follows are some specific prohibitions related to disability under the Fair Housing Act. Every license holder should be mindful of these rights for renters with disabilities.

- Housing providers may not refuse to rent

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housing to a person with a disability because of that disability.

- Housing providers may not have tenant selection criteria, fees, or conditions that are different from those applied or provided to people without disabilities.
- Housing providers cannot require people with disabilities to live only on certain floors or certain areas of the community.
- Housing providers cannot refuse to make repairs or limit access to public or common areas, parking privileges, or services available to other residents.

Reasonable Accommodation Requests

People with disabilities have a right to request a reasonable accommodation, which is a change in rules, policies, practices, or services necessary so someone with a disability has an equal opportunity to use and enjoy a dwelling, including public and common-use areas. When feasible, housing providers like landlords and property managers are required to provide reasonable accommodations when tenants or prospective tenants make a request because of their disability. Any costs associated with reasonable accommodation requests are at the landlord's expense.

However, there has to be a connection between the requested accommodation and the disability. Just because someone has a disability and makes a request doesn't mean it has to be granted. Here are other tips about reasonable accommodation requests.

- Requests can be verbal or written.
- There are no specific words, like *reasonable accommodation*, that must be included in a request.
- Requests can be from the person with the disability, by a family member of that person, or someone else requesting it on a person's behalf.

If a request meets all the requirements but the property owner or manager still refuses to make a reasonable accommodation, this could be unlawful discrimination.

Assistance Animal Requests

Animals that provide assistance, perform tasks for the benefit of a person with a disability, or provide emotional support that alleviates one or more identified effects of a person's disability are considered assistance animals. People with assistance animals can request a reasonable accommodation to allow their assistance animal to live with them. This is true even in properties that have a "no pets policy." According to HUD, an assistance animal is not a pet. Under the law, assistance animals do not have to have a certificate or specific training.

Reasonable Modification Requests

Some prospective or current tenants may request a reasonable modification. A reasonable modification under the Fair Housing Act is a structural change made to an existing premises, occupied or to be occupied by a person with a disability, in an effort to afford such person full enjoyment of the premises.

Examples of modifications that typically are reasonable include widening doorways to make rooms more accessible for people using wheelchairs, installing grab bars in bathrooms, adding a ramp to make a primary entrance accessible, or altering a walkway to provide access to a public or common-use area.

Importantly, the Fair Housing Act provides that the tenant is generally responsible for costs associated with a reasonable modification.

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