



TEXAS REALTORS®

AGENDA

Risk Reduction Committee Meeting

Saturday February 8, 2025

2:15 p.m. – 3:00 p.m.

ANTITRUST STATEMENT

Texas REALTORS® meetings focus on promoting the interests of real estate professionals and consumers, fostering competition, and sharing best practices. Discussion topics that violate antitrust laws are strictly prohibited.

MEETING CONDUCT STATEMENT

Texas REALTORS® is committed to providing a positive and rewarding experience for everyone associated with its events. There will be zero tolerance of any inappropriate behavior, including harassment or discrimination in any form. Meeting participants will act professionally, will use good judgment, and be respectful at all times.

- | | |
|--|---------------------------------|
| I. Call to Order | Marty Chrisman, Chair |
| II. Minutes | Marty Chrisman, Chair |
| III. TREC Update | Steve Stovall, Vice Chair |
| IV. Association Update | Amber Brown, Liaison |
| V. State & Federal Issues Update | |
| a. NAR: Update on National Topics | Marty Chrisman, Chair |
| b. Legal Update | Robin Harris, Associate Counsel |
| i. Talk about intermediary, farm and ranch, para 12. | |

VI. Discuss 2025 Committee Goals

Marty Chrisman, Chair

- a. Identify ways to implement and leverage technology to reduce risk in members' brokerages;
- b. Review the Risk Reduction Specialist certification to consider course material and clarify the process to earn the certification; and
- c. Create risk reduction resources such as videos or documents to be available on the Risk Reduction Committee website.

VII. Risk Reduction Certification Update
and Subcommittee Assignments

Steve Stovall, Vice Chair
Robin Harris, Associate Counsel

VIII. Local Issues

Marty Chrisman, Chair

IX. Adjourn

Marty Chrisman, Chair



Risk Reduction Committee

August 26, 2024 - Regular Meeting

11:30 AM

Gaylord Texan Resort, Room Tate 2-4

Attending: Bob Baker, Linda Bastraw, Timothy Beary, Amber Brown, Marty Chrisman, Kristi Davis, Jeremy De La Garza, Sarah Ivey, Kandi Luensmann, Janice Moore, ROB RAYNER, Stephanie Ryan, Steve Stovall, Brenda Thompson, Pam Titzell, Avis Wukasch

Absent: Moiri Brown, Ann Walker

Excused: Patricia Gillean, Marilyn O'Neill

Others Attending: Texas REALTORS staff liaison Kelsey Vanderbilt, Texas REALTORS staff member Cara Cate, Texas REALTORS Senior Associate Counsel Robin Harris, and Texas REALTORS General Counsel Lori Levy

The meeting was called to order.

Previous minutes were approved.

No motions recorded.

Informational Items: The committee reviewed risk reduction topics relevant to members happening with the Association and Texas Real Estate Commission. The committee received a legal update from Senior Associate Counsel Robin Harris. Finally, the committee discussed the curriculum for the Risk Reduction Specialist Certification. The committee voted to remove two courses from the approved curriculum for the Risk Reduction Specialist Certification: Brokerage Spokesperson Media Training: Lights, Camera & Your Actions; Tune Up Your Real Estate Business.

Notice of Future Meeting: No notice

Person Recording Minutes: Kelsey Vanderbilt

Adjourned: 12:08 PM

[trec.texas.gov](https://www.trec.texas.gov)

TREC Form Changes Effective January 3, 2025

6–8 minutes

11-15-2024 by: Sierra Pizarro

The changes listed below, recommended by the Broker-Lawyer Committee, were adopted by the Texas Real Estate Commission during its [November 4 meeting](#). These apply to all contract forms unless specified otherwise.

Keep in mind, the updated *Condominium Resale Certificate* (TREC No. 32-5) is a voluntary-use form. All remaining contract forms adopted by reference are available for voluntary use until January 3, 2025, when their use becomes mandatory. [View TREC's Contracts](#).

TREC is not affiliated with third-party form vendors, including zipForm. Any questions related to when TREC forms will be available in zipForm should be directed to Texas Realtors or your other forms vendor.

The Adopted Changes

- Paragraph 4 is amended to add the term “geothermal” to the definition of Natural Resource Leases because of a 2023 law change that stipulates property owners own the geothermal energy below the surface of their land and can drill or produce that energy and associated resources.
- To be consistent with a recently updated Texas Department of Insurance procedural rule, Paragraph 6C(1) is amended to include the option of providing the T-47.1 Declaration (which does not need to be notarized)—in lieu of the *T-47 Affidavit*—when the Seller furnishes the Buyer an existing survey. In lieu of providing a “no survey required” option, Paragraph 6C(2) is amended to read “Buyer may obtain a new survey” instead of “Buyer shall obtain a new survey”, and adds that if the Buyer

- ultimately fails to obtain the survey, the Buyer does not have the right to terminate the contract under Paragraph 2B of the *Third Party Financing Addendum* because the survey was not obtained.
- Because Texas law requires a seller to provide a buyer a copy of any mold remediation certificate issued during the five years preceding the sale of the property, new Paragraph 6E(11) is added to provide information regarding this requirement (except in the *Unimproved Property Contract*).
 - Paragraph 6E(12) is modified to add specific examples of the types of notices that should be listed in the paragraph and to add a caution that Seller's failure to provide required notices may provide Buyer with certain remedies, like the ability to terminate the contract.
 - In light of recent discussions surrounding broker compensation, Paragraph 12A(1)(a) and 12A(2) adds that each party pays the brokerage fees that they each have agreed to pay. Paragraph 12A(1)(b) is amended to allow for a specific seller contribution to the buyer's brokerage fees. A new Paragraph 12A(1)(c) has been added to separately address other seller contributions (that was previously in Paragraph 12A(1)(b)) and the prior language that specified the order in which any contribution was to be paid, as well as a limitation on the type of fee that could be paid, is removed. Conforming changes are also made in the *Amendment to Contract*.
 - The title of Paragraph 20 is changed to "Federal Requirements" from "Federal Tax Requirements." In new Paragraph 20B of the Farm and Ranch contract, information regarding the obligations related to the federal Agriculture Foreign Investment Disclosure Act has been added.
 - The compensation disclosure in the Broker Information section of the contracts (except for the *Farm and Ranch Contract*) has been modified to remove the parenthetical referencing the MLS and to add checkboxes to allow for the fee to be reflected either as a percentage or a dollar amount.
 - In the *Third Party Financing Addendum*, to ensure the buyer is terminating appropriately, Paragraph 2A, Buyer Approval, has been changed to require both a notice of termination and a copy of a written statement of the lender's determination like in Paragraph 2B, Property Approval. The language in Paragraph 2B is modified because the

language related to notice of termination timing was different than in other contract provisions and was causing confusion.

- “Requirements” in Paragraph 4 is made singular, and a conforming change is made to a paragraph citation.
- The Condominium Resale Certificate is amended to conform the language in Paragraphs K and L with section 82.157, Texas Property Code.
- In the *Unimproved Property* contract, Paragraph 3D is amended to include the same sales price adjustment language as in the *Farm and Ranch* contract. A dollar sign is also added to Paragraph 3D in the *Farm and Ranch* contract.
- Out of concern about confusion and improper use of Paragraph 11, Special Provisions, by license holders, the *Addendum for “Back-Up” Contract* is modified to provide more clarity on the timing and payment of the earnest money and option fee by incorporating similar language from Paragraph 5 of the contract and by addressing timing and payment of additional fees.
- The committee drafted a new Addendum for Section 1031 Exchange that allows the seller or buyer to disclose an intent to use the subject property as a 1031 exchange and includes a statement that the parties will reasonably cooperate with one another. Providing this as an addendum, rather than in the contract, allows the parties to use it when applicable without causing unnecessary confusion. A reference to the new Addendum for Section 1031 Exchange is also added to Paragraph 22 of the contract.

Redline Forms

The following is a list of the contract forms with links to the files that include the above changes in blue and red.

- [Unimproved Property Contract \(TREC 9-17\)](#)
- [One to Four Family Residential Contract \(Resale\) \(TREC 20-18\)](#)
- [New Home Contract \(Incomplete Construction\) \(TREC 23-19\)](#)
- [New Home Contract \(Completed Construction\) \(TREC 24-19\)](#)

- [Condominium Resale Certificate](#) (TREC No. 32-5)
- [Addendum for Section 1031 Exchange](#) (TREC 60-0)
- [Third Party Financing Addendum](#) (TREC 40-11)
- [Amendment to Contract](#) (TREC 39-10)
- [Residential Condominium Contract \(Resale\)](#) (TREC 30-17)
- [Farm and Ranch Contract](#) (TREC 25-16)
- [Addendum for "Back-Up" Contract](#) (TREC 11-8)

What Else Happened During the TREC Meeting?

[Read the recap](#) for details on proposed revisions to rules related to the *Information About Brokerage Services* form and course proctoring. The proposed changes are out for [public comment through December 22](#).

News and Article Category:

TREC Enforcement Division: E1 Report

Case Status

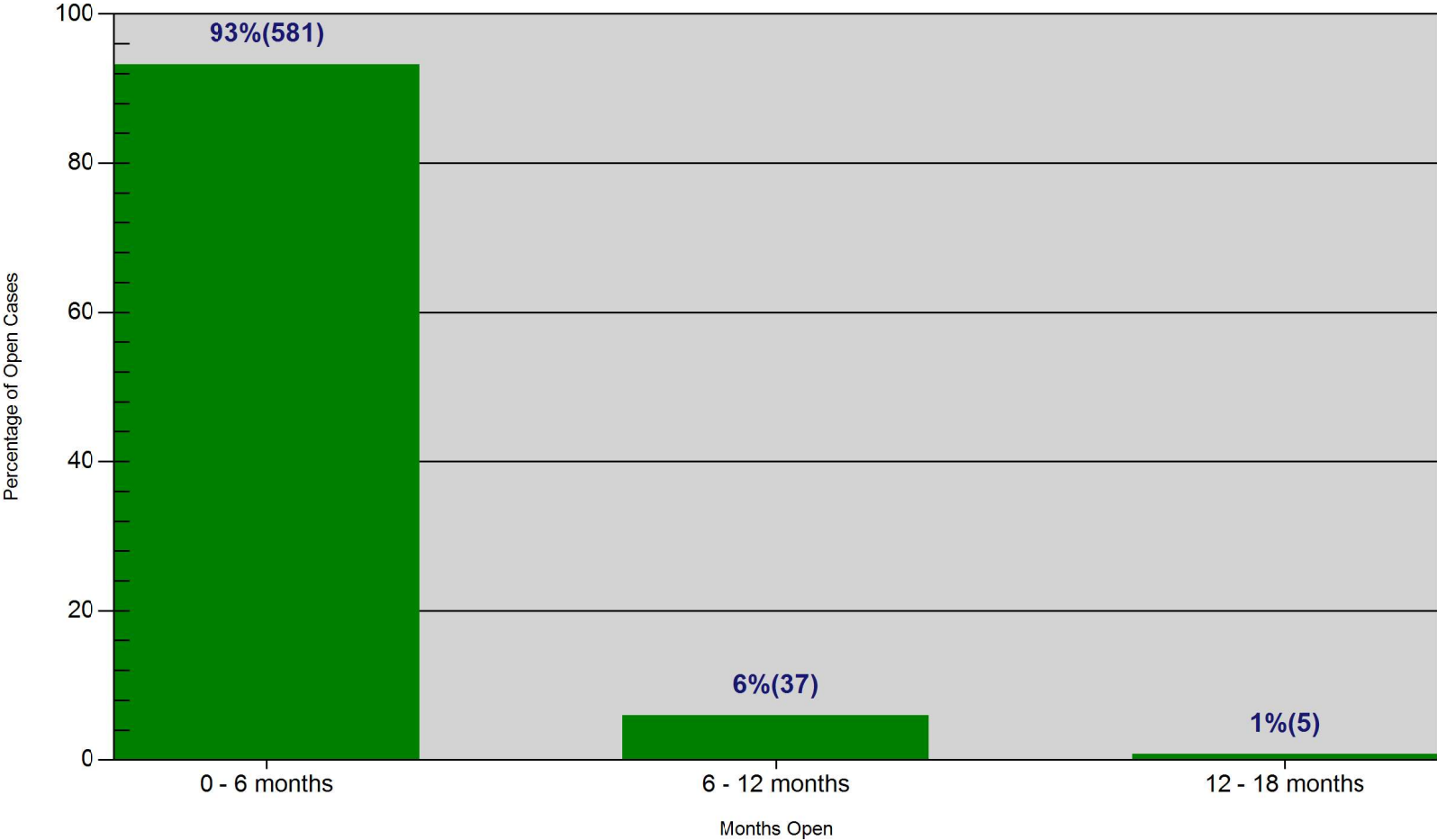
FY 2025

	Sep 24	Oct 24	Nov 24	Dec 24	Jan 25	Feb 25	Mar 25	Apr 25	May 25	Jun 25	Jul 25	Aug 25	YTD
Received During Month	485	522	374	442									1823
Broker/Sales	184	211	143	183									721
Inspector	12	5	6	10									33
Timeshare	1	2	4	3									10
Unlicensed Activity	6	5	4	4									19
No Jurisdiction	12	14	14	9									49
Application Investigation	150	166	134	160									610
Fitness Inquiry	117	117	69	70									373
Education Related	1	0	0	1									2
Easement ROW	1	0	0	1									2
Other	1	2	0	1									4
	Sep 24	Oct 24	Nov 24	Dec 24	Jan 25	Feb 25	Mar 25	Apr 25	May 25	Jun 25	Jul 25	Aug 25	YTD
Closed During Month	522	456	422	392									1792
Complaint Withdrawn	4	6	2	4									16
Cease & Desist Issued	0	0	2	0									2
Disciplinary Action	44	40	35	47									166
Failure to Go Forward	34	31	26	33									124
Insufficient Evidence	40	39	23	44									146
Matter Settled	25	24	24	17									90
No Jurisdiction	97	68	52	54									271
No Violation	3	4	5	1									13
Application Investigation	147	112	147	104									510
Fitness Inquiries	81	93	64	57									295
Other	15	10	10	7									42
Open at Beginning of Month				573									
Received During Month				442									
Closed During Month				392									
Open at End of Month				623									
Received During Fiscal Year				1823									
Closed During Fiscal Year				1792									

TREC Enforcement Division: E2 Report

Open Case Aging Report

as of 12/31/2024

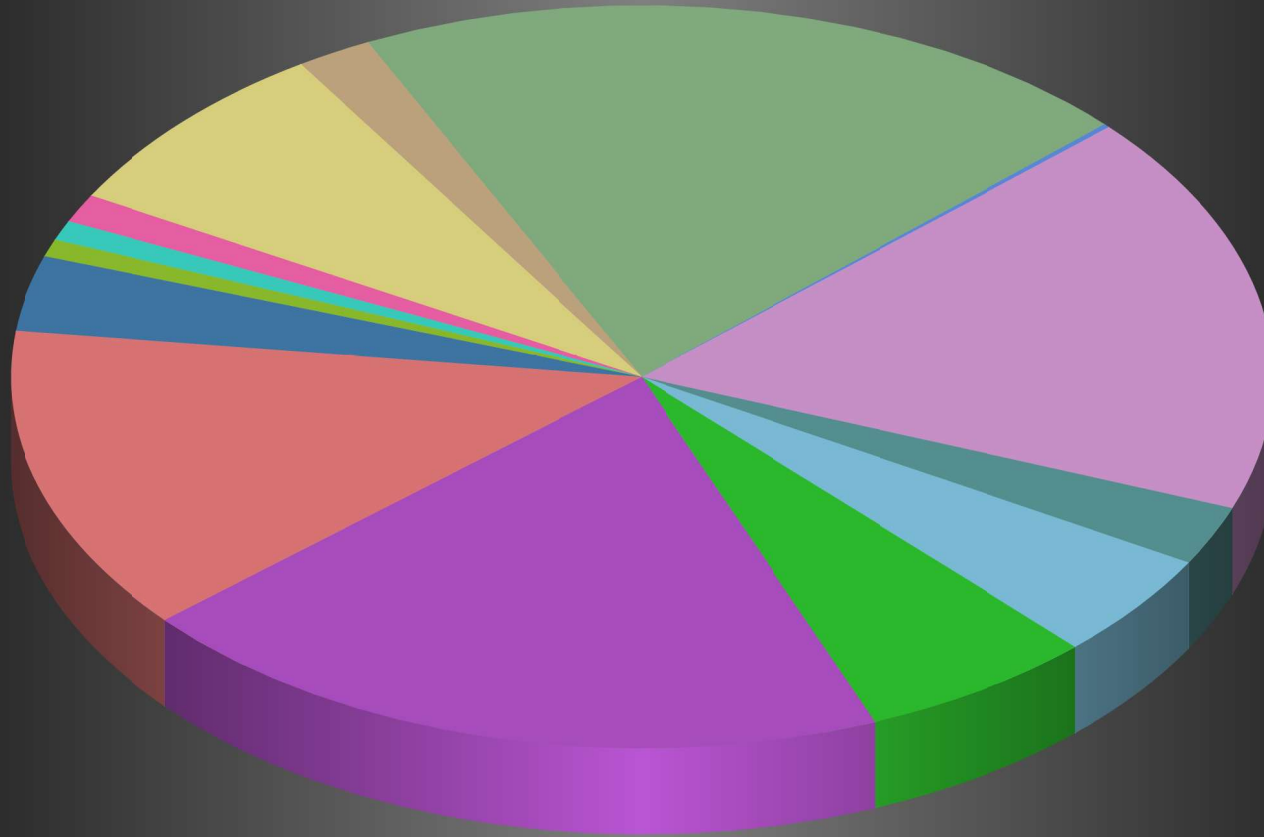


TREC Enforcement Division

Open Case Aging

Complaint Subject Categories for December 2023 through December 2024

1858 Total Allegations



Administrative 4.63 % (86)	Leasing/Property Management - Misappropriation 1.24 % (23)
Advertising 6.03 % (112)	Leasing/Property Management - Other 7.80 % (145)
Breach of Fiduciary Duties 19.64 % (365)	License Holder Acting as Principal 1.94 % (36)
Broker Supervision 13.35 % (248)	Licensure Issues 20.24 % (376)
Failure to Disclose 3.28 % (61)	Sales Misappropriation 0.16 % (3)
Improper Contract/Seller Disclosure form usage 0.75 % (14)	Sales Other 17.49 % (325)
Intermediary/IABS 0.86 % (16)	Unlicensed Activity 2.58 % (48)

Complaint Subject Categories by Month

Subject Matter Categories	Dec-23	Jan-24	Feb-24	Mar-24	Apr-24	May-24	Jun-24	Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24	Total	YTD
Administrative <i>Bad check, contact information, uncooperative, etc.</i>	8	10	7	8	9	1	3	3	12	3	9	5	8	86	4.63%
Advertising <i>Includes misleading & dba</i>	8	8	4	6	16	9	3	9	22	10	5	7	5	112	6.03%
Breach of Fiduciary Duty <i>Including false promise</i>	27	26	27	20	36	39	24	19	37	33	27	22	28	365	19.64%
Broker Supervision	21	28	15	16	25	17	14	20	25	23	14	9	21	248	13.35%
Failure to Disclose	8	7	3	6	5	8	3	2	6	4	5	1	3	61	3.28%
Improper contract/Seller Disclosure form usage <i>Including false promise</i>	0	1	2	1	0	1	0	2	3	1	1	2	0	14	0.75%
Intermediary/IABS	3	3	1	0	5	1	0	0	3	0	0	0	0	16	0.86%
Leasing/Property Management - Misappropriation	1	2	0	3	0	9	2	0	3	1	0	1	1	23	1.24%
Leasing/Property Management - Other <i>Includes negligence, referral, etc.</i>	5	12	23	4	10	17	7	9	17	8	8	5	20	145	7.80%
License Holder Acting as Principal	1	0	3	5	2	2	1	5	6	2	2	3	4	36	1.94%
Licensure Issues <i>Criminal background check, denials, probationary license, etc.</i>	22	32	37	27	23	29	34	29	30	30	33	30	20	376	20.24%
Sales Misappropriation <i>Other than Leasing/Property Management - Misappropriation</i>	0	1	0	0	0	0	0	0	1	1	0	0	0	3	0.16%
Sales Other <i>Includes negligence, rebate, referral, earnest money, etc. (other than Leasing/Property Management - Other)</i>	23	24	44	19	23	31	15	28	36	21	23	14	24	325	17.49%
Unlicensed Activity	1	1	4	3	5	4	3	2	6	3	3	8	5	48	2.58%
Total	128	155	170	118	159	168	109	128	207	140	130	107	139	1858	



Agenda Item 23:

Discussion and possible action to adopt amendments to 22 TAC §537.45, Standard Contract Form TREC No. 38-7, Notice of Buyer’s Termination of Contract

Summary:

The Texas Real Estate Broker-Lawyer Committee recommended revisions to Paragraph 2 of the Notice of Buyer’s Termination of Contract to ensure that the buyer has delivered the lender’s written statement to the seller in accordance with the recent changes to Paragraph 2A, Buyer Approval, of the Third Party Financing Addendum.

Comments:

No comments were received.

Staff Recommendation:

Authorize staff, on behalf of the Commission, to submit for adoption, amendments to 22 TAC §537.45, as published, and the form adopted by reference, to the *Texas Register*, along with any technical or non-substantive changes required for adoption.

The Notice of Buyer’s Termination of Contract form (TREC No. 38-8) will be available for voluntary use after it is posted on the TREC website until April 1, 2025, when its use becomes mandatory.

Motion:

MOVE, that the Commission approve Staff’s recommendation.

MOVE, that the Commission approve Staff’s recommendation with the following changes:

_____.

MOVE, that the Commission not approve Staff’s recommendation.



AGENDA ITEM 23

**ADOPTED RULE ACTION FROM THE FEBRUARY 10, 2025, MEETING OF THE COMMISSION
CHAPTER 537 PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS**

§537.45, Standard Contract Form TREC No. 38-7, Notice of Buyer's Termination of Contract

§537.45. Standard Contract Form TREC No. 38-8~~[38-7]~~, Notice of Buyer's Termination of Contract.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 38-8 ~~[38-7]~~ approved by the Commission in 2025~~[2024]~~ for mandatory use as a buyer's notice of termination of contract.



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)
NOTICE OF BUYER'S TERMINATION OF CONTRACT
CONCERNING THE CONTRACT FOR THE SALE OF THE PROPERTY AT



(Street Address and City)

BETWEEN THE UNDERSIGNED BUYER AND _____ (SELLER)

Buyer notifies Seller that the contract is terminated pursuant to the following:

- (1) The unrestricted right of Buyer to terminate the contract under Paragraph 5 of the contract.
(2) Buyer cannot obtain Buyer Approval in accordance with the Third Party Financing Addendum to the contract. Buyer has delivered to Seller lender's written statement setting forth the reason(s) for lender's determination.
(3) The Property does not satisfy Property Approval in accordance with the Third Party Financing Addendum to the contract. Buyer has delivered to Seller lender's written statement setting forth the reason(s) for lender's determination.
(4) Buyer elects to terminate under Paragraph A of the Addendum for Property Subject to Mandatory Membership in a Property Owners' Association.
(5) Buyer elects to terminate under Paragraph 7B(2) of the contract relating to the Seller's Disclosure Notice.
(6) Buyer elects to terminate under Paragraph (3) of the Addendum Concerning Right to Terminate Due to Lender's Appraisal. Buyer has delivered a copy of the Appraisal to Seller.
(7) Buyer elects to terminate under Paragraph 6.D. of the contract (6.C. for Residential Condominium Contract) because timely objections were not cured by the end of the Cure Period.
(8) Other (identify the paragraph number of contract or the addendum):

NOTE: This notice is not an election of remedies. Release of the earnest money is governed by the contract.

CONSULT AN ATTORNEY BEFORE SIGNING: TREC rules prohibit real estate license holders from giving legal advice. READ THIS FORM CAREFULLY.

Buyer Date Buyer Date



This form has been approved by the Texas Real Estate Commission for use with similarly approved or promulgated contract forms. Such approval relates to this form only. TREC forms are intended for use only by trained real estate license holders. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not suitable for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 936-3000 (http://www.trec.texas.gov) TREC No. 38-8[7]. This form replaces TREC No. 38-2[6].



2021-24 Professional Standards Case Statistics

Summary

We've seen a significant decrease in the number of ethics complaints being filed with Texas REALTORS® over the last three years. Total ethics complaints decreased from 126 in 2023 to 79 in 2024. We are attributing this decrease to a slowdown in the real estate market as well as our efforts to encourage parties to use our ombudsman program to resolve disputes before a formal complaint is filed. The number of arbitration requests has remained steady.

The most commonly cited Articles in 2024 were Articles 1, 12, 16, and 15:

- Article 1 (Protect/Promote interest of client) Cited 41 times
- Article 12 (Present a true picture in advertising) Cited 21 times
- Article 16 (Interference with exclusive representation) Cited 17 times
- Article 15 (False/Misleading statements about REALTORS®) Cited 16 times

Annual Comparison

	2021	2022	2023	2024
Assigned to Ombudsman	224	337	240	210
Resolved	58 (25%)	103 (31%)	86 (36%)	78 (37%)
Assigned to Mediator	9	10	7	13
Resolved	7 (77%)	4 (40%)	4 (57%)	7 (54%)
Arbitrations Filed	24	32	28	25
Ethics Complaints Filed	261	224	126	79
Anonymous Ethics Complaints Filed	6	4	5	1
Total Hearings Conducted	100	138	139	87

LEGAL



Buyer agent compensation is now addressed in numerous forms. Which form should I use?

The Texas Real Estate Commission recently adopted changes to the sales contracts that impact how members use the Texas REALTORS® compensation agreements: *Compensation Agreement Between Broker and Owner* (TXR 2401) and *Compensation Agreement Between Brokers* (TXR 2402).

What changed?

TREC amended Paragraph 12A(1)(a) (Seller's Expenses) and 12A(2) (Buyer's Expenses) of the sales contracts to clarify that each party pays the brokerage fees that they each have agreed to pay. New language in Paragraph 12A(1)(b) allows for a specific seller contribution to be applied to the buyer's brokerage fees.

What form do I use if the seller is willing to pay buyer's broker fees directly (not through the listing broker)?

If the seller agrees to contribute an amount to be applied to the buyer's brokerage fees, the parties should complete Paragraph 12A(1)(b) in the TREC sales contract. The *Compensation Agreement Between Broker and Owner* (TXR 2401) is not needed if 12A(1)(b) is used. Using *Compensation Agreement Between Broker and Owner* and completing 12A(1)(b) creates a duplicate obligation for the seller to pay those fees. The form creates a contractual obligation between the seller and the buyer's broker *outside* of the sales contract and would be appropriate in the case of a for-sale-by-owner transaction or another scenario where

compensation between a seller and buyer's broker is handled outside of the sales contract.

For example, if the seller has checked box Paragraph 5B, Broker's Fee (without compensation for other broker) on the *Residential Real Estate Listing Agreement, Exclusive Right to Sell* (TXR 1101), the seller can later negotiate an amount the seller is willing to pay the buyer's broker and use Paragraph 12A(1)(b) of the sales contract to allow for a specific seller contribution to be applied to the buyer's brokerage fees.

What form do I use if the seller did agree to pay buyer's brokerage fees through the listing broker at the time of listing?

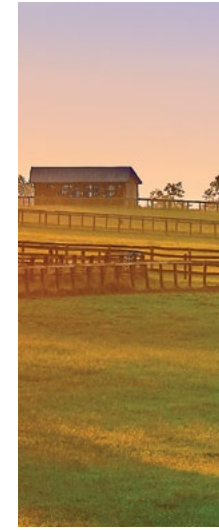
If the seller has checked box Paragraph 5A, Broker's Fee (with compensation for other broker) on the *Residential Real Estate Listing Agreement, Exclusive Right to Sell* (TXR 1101), the listing broker and buyer's broker should complete a separate written compensation agreement

I have a written buyer's representation agreement with my client. The seller is offering buyer's agent compensation in an amount that is higher than what my buyer client agreed to. Can I amend my buyer-representation agreement to reflect the higher amount?

NAR's website states: "You should not amend an agreement for the sole purpose of 'matching' an offer of compensation that is greater than what you and your buyer agreed to. Any amendment must have a legal basis and a fully informed buyer that agrees to amend."

NAR's guidance also applies to amending the agreement to accept a bonus for the buyer's broker. For example, if the buyer is switching from showing to full-services representation, the compensation amount in the buyer-representation agreement could be amended to reflect that change in services.

COMPENSATION IN FARM & RANCH TRANSACTIONS



Note that the *Farm and Ranch Contract* (TXR 1701) has additional broker compensation provisions separate from Paragraph 12A(1)(b). Be sure these provisions are accurately completed to avoid conflict with any amounts listed in Paragraph 12A(1)(b) for payment of brokerage fees.

to formalize the payment of compensation by the listing broker to the buyer's broker. Texas REALTORS® *Compensation Agreement Between Brokers* (TXR 2402) can be used for this purpose and the Disclosure Paragraph on the Broker Information page of the TREC sales contracts can be completed to reflect this agreement. The parties should not use Paragraph 12A(1)(b) of the sales contract in this scenario because the listing broker is paying the buyer's brokerage fees through the separate broker compensation agreement. Paragraph 12A(1)(b) should only be used when the seller agrees to pay the buyer's brokerage fees directly.

When should I fill out the Disclosure Paragraph on the Broker Information page of the TREC sales contracts?

The Disclosure Paragraph should only be filled out if the listing broker has agreed to pay the buyer's broker in a separate agreement such as *Compensation Agreement Between Brokers*. If the parties negotiated an amount the seller will pay to be applied to buyer's brokerage fees in Paragraph 12A(1)(b), that amount should *not* be entered in the Disclosure Paragraph, as it is already in the contract.

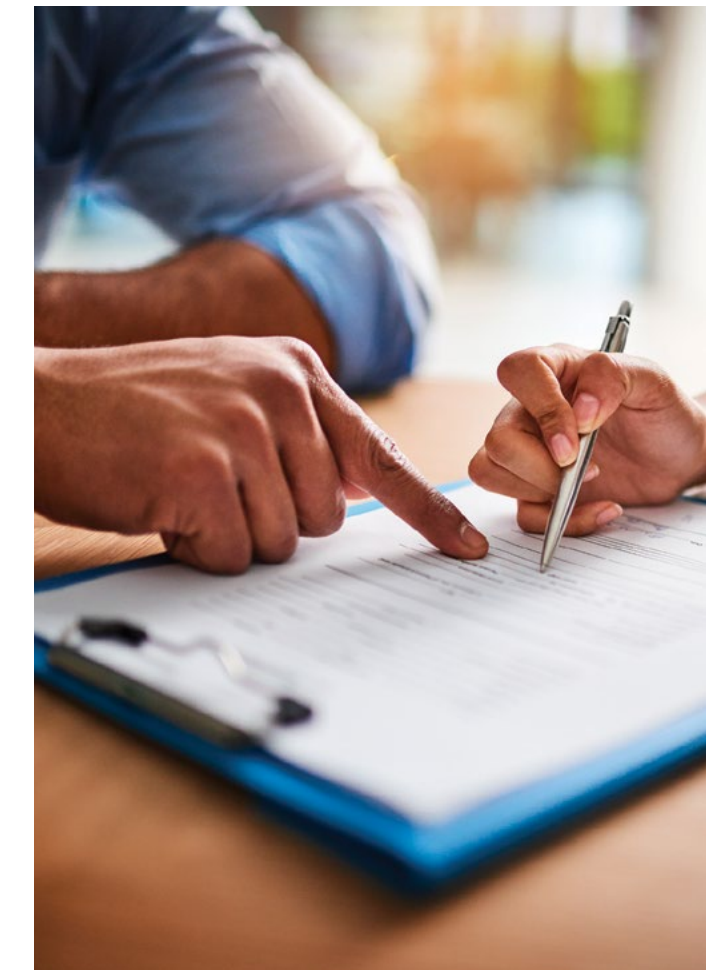
What form do I use for compensation as the buyer's agent when I am intermediary?

When the broker is acting as intermediary, compensation may be covered by the listing agreement if the seller agreed to 5A, Broker's Fee (with compensation for other broker) on the *Residential Real Estate Listing Agreement, Exclusive Right to Sell* (TXR 1101). If the seller instead checked 5B, Broker's Fee (without compensation for other broker), the parties can negotiate the seller paying an additional amount to be applied to buyer's brokerage fees and the parties should complete 12A(1)(b) of the sales contract.

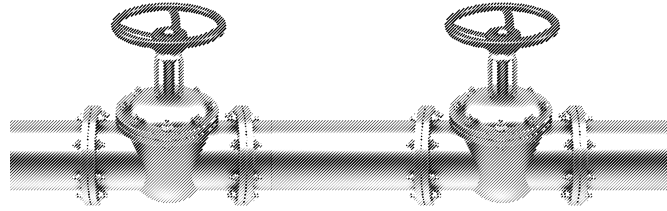
Code of Ethics Amended to Address REALTOR®'s Interest in Property

Last November, the National Association of REALTORS® Board of Directors and Delegate Body approved changes to Article 4 of the Code of Ethics. While this duty previously existed, the changes provide needed clarity for REALTORS® to disclose in writing if they have a present or contemplated interest in a property for sale or lease. A new standard of practice further clarifies that the duty to disclose applies when REALTORS® represent themselves, a member of their immediate family, their firm or any broker or agent thereof, or an entity in which the REALTOR® or the REALTOR®'s immediate family has a legal interest. REALTORS® are not required to disclose the identity of the client or customer nor the specific nature of the interest. The changes were effective January 1, 2025. Here is text of the new Article 4:

REALTORS® who have a present ownership interest in property for sale or lease, or contemplated interest to purchase or lease property, must disclose in writing the existence of such interest to all parties to the transaction prior to a party signing any agreement.



Property Owners Win State Supreme Court Case with Texas REALTORS® Support



The Texas Constitution requires adequate compensation to a landowner for a taking of private property for public use. What evidence a court can consider to determine “adequate compensation” was a major point of contention in a case that made its way to the Texas Supreme Court. HSC Pipeline Partnership wanted to use a pipeline easement across the land of a private owner (the Hlavinkas), but the parties were miles apart on the value of the easement.

The trial court found that Terry Hlavinka’s testimony estimating the value of the land for the easement at \$3.3 million—based on other sales the Hlavinkas made to pipeline companies—was inadmissible. Instead, the trial court agreed with the pipeline company’s valuation of only \$132,293, which was derived from the land’s agricultural-use value.

The Hlavinkas appealed all the way to the Texas Supreme Court. With the support of a friend-of-the-court brief from Texas REALTORS®, the Texas Supreme Court agreed with the Hlavinkas and sent the case back to the trial court with the order to allow the property owner’s testimony to be considered. In October 2024, a Brazoria County jury awarded the Hlavinkas \$2.7 million for the value of the easement.

The Texas REALTORS® Legal Fund provides financial support or other types of legal assistance for litigation issues that have statewide impact for the association’s members and real estate consumers. Learn more about the Legal Fund and find an application at texasrealestate.com/legalfund.

SCAN THE CODE TO VIEW THE FULL TEXAS SUPREME COURT DECISION ON HLAVINKA V. HSC PIPELINE PARTNERSHIP, LLC.



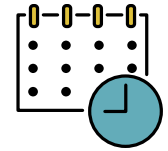
My client used the Texas REALTORS® form Commercial Contract—Improved Property (TXR 1801) to make an offer on a property. The seller rejected the offer. The seller’s agent said that because the seller was selling the property “as is” and was not going to do any repairs, my buyer-client’s request for a feasibility period was not necessary. Does my buyer really have to forego a feasibility period simply because the seller says he won’t make any repairs regardless of what an inspection turns up?

NO. When using the Texas REALTORS® Commercial Contract—Improved Property, all buyers purchase property in its present condition, or “as is,” at the time of contract execution except when specific repairs are listed in Paragraph 7A.

Even if the buyer’s offer lists no repairs in Paragraph 7A, that does not automatically prevent the buyer from securing a right to inspect the property and possibly terminate the contract under the terms of Paragraph 7B, the Feasibility Period Paragraph.

While a seller could refuse to sign a contract that permits a buyer to have inspections and a right to terminate under a feasibility period, the seller should carefully consider such a decision. Forcing a buyer to waive these rights might increase the seller’s risk of a subsequent claim of withholding information about the condition of the property. Furthermore, some buyers may be reluctant to buy a property without a right to inspect the property and terminate the contract if not satisfied that the property meets their expectations. One additional point worth noting is that granting the buyer’s feasibility period does not obligate the seller to do any repairs.

You can bring up these points with the seller’s agent to see if the seller will reconsider and allow your client to resubmit the offer with a feasibility period.



WHEN COUNTING DAYS for a performance item in a TREC-promulgated contract, the effective date can be thought of as Day 0, with the day after the effective date counting as Day 1. Other contracts may work differently.



ALL REAL ESTATE TEAM NAMES MUST END WITH TEAM OR GROUP and must not include any terms that could give the appearance that the team is offering brokerage services independent from the sponsoring broker, such as *brokerage, company, or associates*. Team names must be registered with TREC by your broker before you use that team name in advertising. Also, your broker must notify TREC in writing within 10 days after you stop using the team name.

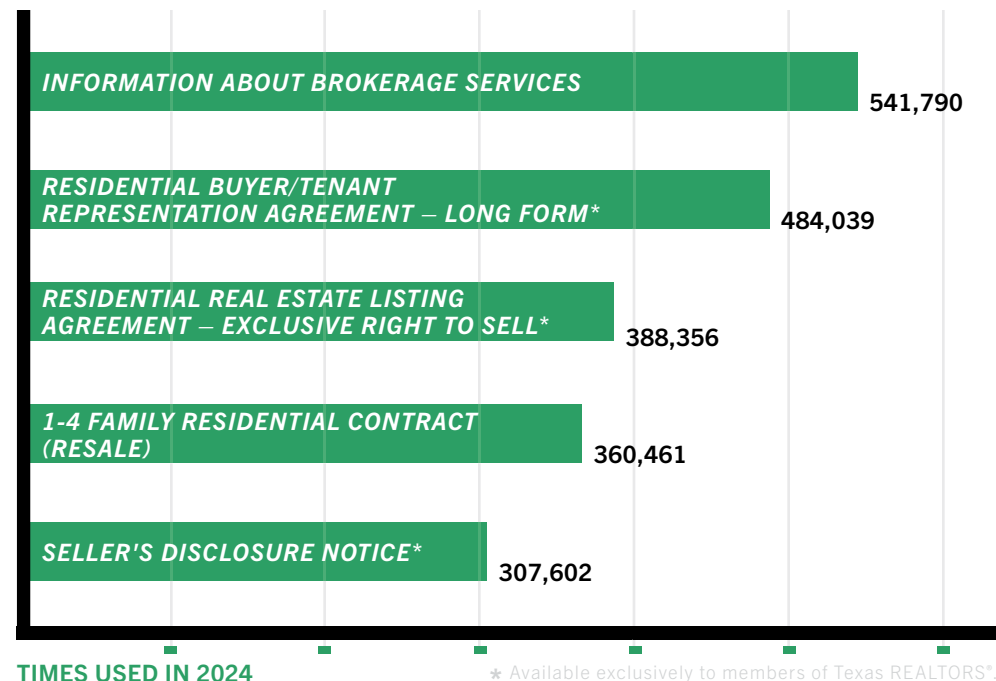


THE TEXAS REALTORS® LEGAL HOTLINE is your exclusive access to talk to an attorney who can provide real estate information about forms, laws, and regulations. Call 512-480-8200, M-F (excluding holidays) from 9 a.m. – 4 p.m. Central.

YOUR FORMS

Commercial landlords and tenants may use the **Commercial Lease Rent Forbearance Agreement** (TXR 2126) as a way to amend the *Commercial Lease* (TXR 2101) to give the tenants more time to pay late rent and other debts. If the tenants follow the payback schedule and fulfill all debts, the tenants may continue to occupy the space and landlords will not pursue legal action against tenants for late payments. *Commercial Lease Rent Forbearance Agreement* can be used with commercial contracts and is one of more than 40 commercial forms exclusively available to members of Texas REALTORS®.

Most used forms in zipForm by Texas REALTORS® members in 2024



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Hot Topics in Broker Risk Reduction

November 2024 | NAR Legal Affairs

**CLASS ACTION SETTLEMENT | ANTITRUST | CYBERCRIME & WIRE FRAUD
ARTIFICIAL INTELLIGENCE | COPYRIGHT INFRINGEMENT | FAIR HOUSING
DEED FRAUD | INDEPENDENT CONTRACTOR STATUS
TCPA & DNC: TEXTING AND CALLING | ANTI-MONEY LAUNDERING**

DEADLINE APPROACHING - JANUARY 1, 2025

All business entities—including real estate brokerages—doing business in the U.S. must comply with FinCEN's Beneficial Ownership Rule. For details, see page 13.

CLASS ACTION SETTLEMENT

On March 15, 2024, NAR reached a proposed settlement agreement that would end litigation of claims brought on behalf of home sellers related to broker commissions. The agreement would resolve claims against NAR, [over one million NAR members](#)¹, all state/territorial and local REALTOR® associations, all association-owned MLSs, and brokerages with an NAR member as principal that had a residential transaction volume in 2022 of \$2 billion or below.

The proposed settlement is subject to final court approval and the final approval hearing is on November 26, 2024. The proposed settlement makes clear that NAR continues to deny any wrongdoing in connection with the Multiple Listing Service cooperative compensation model rule that was introduced in the 1990s in response to calls from consumer protection advocates for buyer representation.

Under the terms of the agreement, NAR implemented several practices changes, effective on August 17, 2024, including but not limited to: (1) removing offers of cooperative compensation from the MLS; and (2) requiring an MLS Participant working with a buyer to obtain a written agreement prior to touring a home listed

¹ NAR's release covers all members except: (1) independent contractors or employees of HomeServices of America or one of its affiliates; and (2) employees of the remaining corporate defendants in the *Gibson/Umpa* cases. Many of those corporate defendants, including HomeServices, have reached their own settlements.

on the MLS. In addition, if approved, NAR will pay \$418 million over approximately four years.

Call to Action

1. Continue having transparent conversations with consumers about the value NAR members bring to the transaction, both on [the listing side](#) and the [buyer's side](#) and how real estate professionals are paid.
2. Review your listing agreements and buyer agreements to ensure the terms and disclosures required by the settlement are included. Refer to [these FAQs](#) for more details.
3. Consider using a [written broker-to-broker](#) agreement to confirm any offer of compensation.
4. Use the consumer guides, FAQs, social media toolkit and other resources at [facts.realtor](#) to educate consumers about compensation and the requirement to use written agreements when a buyer works with a MLS participant.
5. Ensure you are implementing the terms of the settlement in good faith. The consequences for failing to abide by the terms of the proposed settlement may be severe—including losing your released status under the settlement and losing NAR membership. Regardless of your NAR membership status, if you fail to abide by the terms of the settlement, you can lose MLS access or even face possible legal liability.

Resources

- [facts.realtor](#): Access all the details about the proposed settlement in the *Sitzer-Burnett* case, including FAQs, videos, and a series of consumer guides explaining the practice changes for home sellers and buyers.

ANTITRUST

Understanding the principles of antitrust law is critical for both brokers and agents, not only to protect the brokerage from costly antitrust claims, but to best serve consumers in their homeownership journey. Keep in mind that brokers may be held liable for the anticompetitive behavior of their salespeople and staff, so having an antitrust compliance program in place to educate and train staff is important. Business decisions should always be made unilaterally and independently, and never as a result of an agreement, understanding or conspiracy among competitors. Any agreement to fix prices is prohibited, and real estate professionals should never agree, expressly or implicitly, with their competitors about matters such as the commission rate charged to consumers or the cooperative compensation they will offer to cooperating brokers. Similarly, brokers should never agree with other competitors to refuse to deal—or to only deal on certain terms—with another competitor or business. Avoid

discussions with competitors about how to do business with other competitors altogether.

Risk Reduction Tips

1. Always make business decisions unilaterally and independently
2. Do not discuss your pricing or compensation with other brokers.
3. Do not discuss or agree with competitors to boycott or refuse to deal with another broker or business.
4. Do not discuss or agree with competitors to divide up markets, customers or practice areas. Such market allocation agreements are generally illegal.
5. Implement a written antitrust compliance program and regularly educate salespeople and staff about antitrust laws.
6. Never contribute to anticompetitive discussions – whether in-person or online. If you find yourself in a meeting or conversation where anticompetitive behavior occurs, make your objection clear by leaving the meeting and ask that your objection be recorded in the minutes or document it in a follow-up email.

Resources

- [Window to the Law: Antitrust for Real Estate Professionals](#)
- [“Antitrust 101 for Real Estate Professionals” video](#)
- [Antitrust Pocket Guide](#)
- [MLS Antitrust Compliance Policy](#)

CYBERCRIME and WIRE FRAUD

Cybercrime—particularly wire fraud—continues to be a top concern in the real estate industry. In 2023, the FBI Internet Crime Complaint Center (IC3) received a record number of complaints from the American public, a nearly 10% increase over 2022, with potential losses exceeding \$12.5 billion, up 22%. The top scams facing consumers and business in the real estate industry are:

1. **Phishing/vishing/smishing/pharming** whereby fraudsters use unsolicited emails, text messages and phone calls from a purportedly legitimate company to obtain personal, financial and login credentials;
2. **Wire fraud** is carried out by fraudsters compromising email accounts to effectuate fraudulent fund transfers; and
3. **Ransomware** whereby cybercriminals install malicious software that locks users out of their systems or encrypts data making it inaccessible unless a ransom payment is paid.

FinCEN’s Financial Trend Analysis report on business email compromise in real estate underscores that real estate continues to be an attractive target for cybercriminals to exploit the high monetary values generally associated with real estate transactions.

According to the report, FinCEN found that 37 percent of fraudulent wire instruction emails impersonate the title/closing entity, and 23 percent of such emails impersonate a real estate professional in the transaction. Real estate professionals should be aware of the risks facing not only their businesses, but also consumers, and educate staff and clients about preventative steps they can take to prevent falling victim to cybercrime.

Risk Reduction Tips

1. Train staff to be suspicious before clicking on unknown links or attachments.
2. Routinely patch and update business software and equipment.
3. Distribute [information to consumers](#), remind consumers throughout the transaction about the threat of wire fraud, and always verify any wire or payment instructions with a known contact before sending any money.
4. Use multifactor authentication and require passwords to be updated regularly.
5. Backup data and files regularly, following the 3-2-1 backup strategy; 3 copies of the data in 2 different formats with 1 copy stored off-site.
6. Require vendors to adhere to good cybersecurity practices, and obtain assurances in contracts.
7. Immediately report any suspected cybercrime incident by filing a report at www.ic3.gov, to the local FBI office, and local law enforcement.

Resources

- [Mortgage Closing Scam Client Advisory Brochure](#)
- [Window to the Law: Avoiding Wire Fraud in Transactions](#)
- [Window to the Law: Protecting Your Business from a Ransomware Attack](#)
- [Window to the Law: Cybersecurity: What You Need to Know](#)
- [Cybersecurity Checklist: Best Practices for Real Estate Professionals](#)
- [NAR Data Security & Privacy Toolkit](#)
- [NAR Emerging Technology Series: Episode 3 – Ransomware](#)
- [Drive with NAR: What to Do If Your Business Faces a Ransom Threat](#)
- [AEI Year-Round Virtual Sessions: Cybersecurity Best Practices in the Era of COVID-19](#)
- [Cyber and Fidelity Insurance Report for Real Estate Brokers](#)
- [FinCEN Financial Trend Analysis on Business Email Compromise in the Real Estate Sector](#)
- [FBI Internet Crime Center Internet Crime Report 2023](#)
- [Directory of Local FBI Field Offices](#)
- [Drive with NAR: How to Educate Clients About Real Estate Scams](#)
- [Consumers: Agents Aren't Warning Us Enough About Scams](#)
- [Domain Listing Scam Targeting NAR Members](#)

ARTIFICIAL INTELLIGENCE

Generative artificial Intelligence (AI) has become a game-changer for the real estate industry in the past year, offering a wide range of capabilities to improve efficiency and productivity. AI platforms can create listing descriptions, property searches, social media posts, marketing content, and more. However, understanding the risks of using AI is critical to avoid ethical issues and potential legal liability. AI platforms are not 100% accurate and its output may not comply with fair housing laws. REALTORS® remain responsible under Articles 2 and 12 of NAR's Code of Ethics to ensure their representations and communications are honest, truthful and avoid exaggerating, misrepresenting or concealing pertinent facts.

Risk Reduction Tips

1. [Create an AI usage policy](#) for your brokerage office.
2. Always review AI-generated content for accuracy.
3. Protect personal, financial and confidential information from being shared with an AI platform. Information provided to a generative AI platform is used to train the AI for future interactions, so personal information you input may not remain private.
4. Do not use AI to create content you wish to copyright, as AI-generated works are not protectable under U.S. Copyright law.
5. Avoid using AI to draft contracts, modify standard forms, or provide legal advice to clients. Instead, seek appropriate advice from actual professionals.
6. Disclose when an image has been created, altered or enhanced using AI.

Resources

- [Window to the Law: Legal Tips to Use AI in Your Business](#)
- [Using AI to Enhance Listing Photos Can Be Legally Risky](#)
- [How Generative AI Can Transform Your Real Estate Images](#)
- [Prevent Deepfakes from Hijacking Your Transactions](#)
- [Course: What Is AI and Why Do We Need to Know About It?](#)
- [How AI and VR are Helping to Buy and Sell Homes](#)
- [REALTOR® Magazine: Start Experimenting with AI Now](#)
- [REALTOR® Magazine: What You Can Do That Artificial Intelligence Can't](#)
- [REALTOR® Magazine: AI Use in Real Estate Comes With Copyright Concerns](#)
- [2023 PropTech Forecast: Generative AI](#)
- [Why Caution is Needed in Following the ChatGPT, AI Hype](#)
- [RPR: Let a Market-Specific AI Scriptwriter Do the Work](#)
- [AI Needs Solid Input Data for Better Results](#)
- [Transforming How Agents Work the Phones Using AI Call Assistants](#)
- [Generative AI Is Your Ally for Smart Staging and Faster Deals](#)
- [AI in Renting: Enhanced Security, Streamlined Services](#)

COPYRIGHT INFRINGEMENT

Copyright law affects multiple aspects of the real estate business, and it is easier than ever for copyright owners to discover unauthorized uses of their works. Therefore, it is important for real estate professionals to understand the basics of copyright and how to avoid infringing another person's work. To avoid costly copyright infringement demands, real estate professionals should be sure to obtain permission to use any third-party work, comply with the terms of the license to avoid copyright infringement and keep records to easily confirm rights as needed. Many of the most common activities performed by real estate professionals can create some risk of copyright infringement, including:

1. **Floorplans:** A federal court recently found brokerages' use of independently created floorplans in their listings to be a fair use of copyrighted architectural drawings of a home. The [Designworks](#) decision provides a clear roadmap for brokers facing allegations that their creation or use of floorplans infringes copyrights in underlying home designs and will hopefully deter other home designers from pursuing similar claims.
2. **Photos:** Be sure to confirm that any rights received align with the current and planned use of photographs or other third-party work before using it, including on a website, in the MLS, and marketing materials.
3. **Music:** Real estate professionals should also ensure proper rights to any music used at live events, such as an open house, and before incorporating into recordings. Keep in mind that specific types of licenses must be obtained before incorporating music into a video recording.
4. **Websites:** Real estate professionals should comply with the Digital Millennium Copyright Act safe harbor to reduce the risk when third parties post on their websites, including photos and music that appear through an IDX displays.

Risk Reduction Tips

1. Obtain ownership or a broad exclusive license for photographs.
2. Secure a performing rights license to play music at a live event and a synchronization and master recording license before incorporating music into a video, such as a listing video. Be sure to understand the rights granted in license agreements and consider any future use of copyrighted material when securing the license.
3. Comply with the Digital Millennium Copyright Act safe harbor.
4. Keep records of license agreements to easily confirm rights, if challenged.

Resources

- [Window to the Law: Using Floorplans to Market Listings](#)
- [Window to the Law: Protect Your Website from Copyright Liability](#)
- [Window to the Law: Copyright Best Practices for Listing Photos](#)
- [Window to the Law: Copyright Issues for Real Estate Professionals](#)

- [Window to the Law: How to Avoid Copyright Infringement](#)
- [Listing Photo Sample Agreements](#)

DEED FRAUD

Deed fraud encompasses a range of crimes where the criminal seeks financial gain through a scheme involving real property. One such scheme is seller impersonation fraud, which is on the rise. . According to the [American Land Title Association](#), 28% of title insurance companies experienced at least one seller impersonation fraud attempt in 2023, and in April 2024 alone, two in 10 title companies experienced attempts.

Scammers posing as property owners target lien-free vacant land and unoccupied properties, tricking a real estate professional into listing the property for sale. In a “too good to be true” scenario, the seller asks to list below market value and wants a quick sale, preferably for cash. Communication is by text or email and the seller wants a remote closing, as they’re out of state or the country. These scams defraud innocent buyers and can result in liability for unwary agents. State regulators may take action against a licensee for negligence in failing to exercise due diligence to verify the seller’s identity and ownership interest.

Risk Reduction Tips

1. Look out for [red flags](#) when approached to list a vacant parcel or unoccupied property, such as insisting on a quick sale and all-cash buyers, accepting less than market value, and refusing to meeting in person or by videoconference.
2. Exercise due diligence to verify the purported seller is the actual property owner, which may include sending a certified letter to the owner’s address of record on file with the county recorder.
3. Conduct independent research to confirm the property owner, such as looking online for a recent photo or speaking to a neighbor.
4. Make sure you or the title company select the remote notary at closing.
5. Report a suspected vacant land scam to local law enforcement and file a complaint at IC3.gov.
6. Remove the listing from the MLS and take down any advertisements quickly.

Resources

- [Window to the Law: Avoiding Vacant Land Scams](#)
- [Vacant Land Scams Red Flags and Recommended Practices](#)
- [Scammers are Plotting to Sell Vacant Land Fraudulently](#)
- [U.S. Secret Service Advisory](#)
- [ALTA Issue Brief: What is Deed Fraud?](#)
- [The Safety Series: How to Educate Clients About Real Estate Scams](#)
- [How to Handle Scammers, Squatters, and Trespassers](#)

FAIR HOUSING

Real estate professionals must keep fair housing laws top of mind as they navigate the practice changes and the proposed settlement agreement. With variety of options and approaches to compensation grows, there is potential for fair housing violations.

Consistency in applying policies and procedures remains key. Brokerages should establish procedures to ensure that while negotiating a written buyer agreement, all available options are offered to the client so that agents are not treating consumers differently because of their race, sex, national origin, or other protected characteristic. Where different services or pricing are offered to different clients, agents should document the legitimate business reason for the differences.

On the listing side, if the seller authorizes offers of compensation as part of the marketing strategy, any variation should be based on a legitimate business reason and never based on the buyer or the buyer agent's protected characteristics. Protected characteristics under federal law include race, color, religion, sex, national origin, disability and familial status. Additional protected characteristics can vary based on jurisdiction, so be familiar with state and local fair housing laws. Remember, if a seller denies housing or a housing-related service—such as an offer of compensation to a buyer broker—based on the buyer or buyer broker's protected characteristics, the seller *and* the listing agent could face liability.

Risk Reduction Tips

1. Continue following [best practices](#) when faced with discriminatory clients:
 - Remind clients of their obligations under the Fair Housing Act, and of your policy not to discriminate.
 - Discontinue representation of any client who has made a statement or taken an action in violation of fair housing laws.
 - Report the situation to your broker.
 - Document the situation in writing, including what actions you took in response to your client's violations.
 - If you are unsure whether a client's actions violate fair housing laws, consult with an attorney.
 - If a client experiences discrimination, discuss the situation with your broker and inform the client of their options for filing a complaint.
2. Be consistent and objective with any screening, pre-showing or loan qualification requirements.
3. Establish and follow policies and procedures for buyer consultations and listing presentations, providing clients with all their options.
4. Provide buyers with listing information for all properties that meet their objective criteria; do not filter listings based on neighborhood characteristics or the availability of compensation.

5. Document the legitimate business reason when different prices, compensation, or services are offered to different clients, buyers, or cooperating brokers.
6. Incorporate regular implicit bias and fair housing compliance into your ongoing training plans.

Resources

- [Consumer Guide: Fair Housing](#)
- [Window to the Law: Fair Housing and the Practice Changes](#)
- [Real Estate Brokerage Essentials Chapter on Fair Housing](#)
- [Article: Criminal History-Based Practices and Policies](#)
- [Video: Implicit Bias Override](#)
- [At Home with Diversity Certification](#)
- Research Report: [A Snapshot of Race and Homebuying in America](#)
- [REALTOR® Fair Housing Declaration](#)
- [Fairhaven: A Fair Housing Simulation](#)
- [Window to the Law: Advertising within the Fair Housing Framework](#)
- [Window to the Law Video: Creating a Diversity, Equity & Inclusion Policy](#)

INDEPENDENT CONTRACTOR STATUS

The Federal Trade Commission issued a final rule prohibiting employers from enforcing noncompete agreements against workers. Under the rule, a worker **includes independent contractors**. The rule was scheduled to take effect September 4, 2024, but has not taken effect due to a preliminary injunction issued by the U.S. District Court for the Northern District of Texas prohibiting FTC enforcement of the rule nationwide.

The ability to work as an independent contractor is recognized and protected under [many state](#) and some federal laws. The risk of misclassification poses a challenge for brokerages, particularly with the proliferation of teams, where team leads may want to dictate how team members manage their tasks and time. While there is often an inherent conflict between common law independent contractor status and the traditional classification of real estate salespeople as independent contractors, some state statutes expressly address the unique status of real estate agents, permitting classification as independent contractors despite the required control and supervision the broker has over the licensees. For example, in 2022, New Jersey amended its real estate brokerage law to retroactively exclude real estate salespersons from the state wage law, which uses the “ABC test” to classify workers. In addition, a [recent California appellate decision](#) affirmed a salesperson’s ability to choose to be an independent contractor, citing a 3-part test found in the state business licensing code.

However, litigation and new federal and state legislation continue to threaten workers’ ability to be classified as independent contractors, including many real estate professionals. On March 11, 2024, a new U.S. Department of Labor (DOL) [rule](#) updated the test for determining whether a worker is an employee or independent contractor under the Fair Labor Standards Act. The new rule shifts the analysis of whether a worker is an employee or an independent contractor

to a more complex “totality-of-the circumstances” standard. The rule provides for six (6) factors to consider when assessing how a worker is classified under the FLSA. The rule is expected to make it harder for workers to be classified as independent contractors, despite the DOL stating that the new rule will not result in widespread changes to worker classification.

Risk Reduction Tips

1. Know your state law regarding independent contractor classification of real estate licensees. Statutes protecting this classification are the strongest defense to a legal challenge.
2. Always have a written independent contractor agreement and consider including a mandatory arbitration and class action waiver provision in such agreements.
3. Don't mandate meetings, administrative office duties, or use of certain tools.
4. Allow salespeople to work where, when, and how they deem best.
5. Consult your local legal counsel whether to amend or remove non-compete clauses in written independent contractor agreements.

Resources

- [Window to the Law: Independent Contractor Best Practices](#)
- [Window to the Law: Legal Issues for Teams](#)
- [Frequently Asked Question about the Department of Labor's Independent Contractor Rule](#)
- [FTC Issues Final Rule Banning Noncompete Agreements](#)
- [NAR Issue Brief: Real Estate Professionals' Classification as Independent Contractors](#)
- [Independent Contractor State Law Survey](#)
- [Independent Contractor Status for Real Estate Professionals](#)
- [Independent Contractor Status Frequently Asked Questions](#)
- [Key Provisions for Independent Contractor Agreements](#)
- [Small Entity Compliance Guide](#)
- [U.S. Department of Labor Final Independent Contractor Rule](#)

TCPA & DNC: TEXTING AND CALLING

Plaintiff lawyers have created a lucrative business model filing class action lawsuits alleging real estate professionals have violated the Telephone Consumer Protection Act (TCPA) and Do Not Call (DNC) laws by sending text messages and placing phone calls without the recipient's consent. Specifically, the TCPA requires prior express written consent before using an automatic telephone dialing system (ATDS) to place telemarketing calls or texts to wireless numbers.

The [United States Supreme Court](#) has narrowly defined the TCPA's ATDS definition to require that the call technology not only store or dial numbers, but actually use a random or sequential number generator to place the calls. Thus, calls using random or sequential number generators still require prior express written consent, which involves a signed agreement clearly and conspicuously disclosing the text recipient's permission to receive call and text messages from the sender. Now it is clear that calls generated individually - not using a random or sequential number generator - need not obtain prior consent at all, even if the device has the ability to store and dial call lists. Keep in mind that DNC laws should always be followed, which prohibits individuals from contacting phone numbers contained in the DNC registry.

In response to the U.S. Supreme Court's decision, several states have enacted so-called "mini-TCPA" laws which change the ATDS definition and provide additional restrictions on telemarketing calls and texts. In some states, the requirement for express written consent has been expanded to include any calls made using an automated dialing device or artificial voice message, not just random or sequential numbers. States have also adopted additional restrictions on the times in which such calls can be made as well as specifying the content and timing of required disclosures during a telemarketing call. These mini-TCPA laws apply to calls made within and to consumers located within the applicable states and could provide the setting for the next wave of litigation on this issue as state courts tend to be more consumer-friendly.

On December 13, 2023, the FCC adopted new rules under TCPA, including: clarifying Do-Not-Call Registry restrictions apply to text messages as well as phone calls; requiring the seller of a product or service to obtain consent directly from the consumer, known as 1-to-1 consent, before using an ATDS or sending artificial voice messages; and stating artificial voice messages includes messages developed using generative AI.

Risk Reduction Tips: TCPA

1. Consent is the gold standard to avoid TCPA liability and must be obtained when using technology that employs a random or sequential number generator. Consent should be clearly stated, well documented and preserved.
2. Include language on consent forms stating that recipients who submit wireless numbers agree to receive calls and text messages from or on behalf of the sender.
3. Allow recipients to easily cancel or opt-out (e.g., by responding

“STOP” or “UNSUBSCRIBE”). Promptly remove individuals from messaging lists who have opted out. Maintain an opt-out record, including the date the person opted-out and the date the person was removed.

4. Talk to your vendors about TCPA and DNC compliance and indemnification.
5. Consult counsel regarding the applicability and requirements of any applicable “mini-TCPA” laws.
6. Real estate professionals that live in states with mini-TCPA laws such as Florida, Maryland, Michigan, Missouri, New York, Oklahoma, Pennsylvania and Washington, should review their telemarketing practices and policies to ensure compliance with applicable federal and state laws.

Risk Reduction Tips: DNC

1. [Create an office policy](#) for compliance with DNC rules and implement a method to monitor compliance.
2. [Obtain an updated DNC list monthly](#) and cross reference with your company customer relationship management platform.
3. Obtain prior express written consent directly from consumers you intend to call or text for marketing purposes.
4. Know your state laws and whether it has adopted a “mini-TCPA” law.
5. Review the terms of service with any vendors you use to obtain phone numbers or automate calls and texts and ask that the vendor warrant its compliance with the TCPA and indemnify you from TCPA and Do-Not-Call Registry liability.
6. Weigh the return on investment before incorporating ATDSs and artificial voice messages into your marketing practices to be sure the benefit outweighs any risk of TCPA liability.

Resources

- [Window to the Law: Updated Guidance on TCPA Compliance](#)
- [Window to the Law: Comply with The Do Not Call Registry](#)
- [Window to the Law: TCPA and Texting](#)
- [Window to the Law: TCPA Update on Cell Phone Marketing](#)
- [TCPA Quick Reference Guide](#)
- [DNC Safe Harbor Provision](#)
- [REALTOR® Magazine: “Do You Know Who You Are Calling?”](#)
- [National Do Not Call Registry](#)

ANTI-MONEY LAUNDERING

BENEFICIAL OWNERSHIP RULE

Starting January 1, 2024, all domestic and foreign business entities formed or registering to do business in the US must provide the Financial Crimes Enforcement Network (FinCEN), a bureau within the Treasury Department, with the identities of persons with 25% or more ownership interest ("Beneficial Owners"). Business entities include most LLCs and corporations, with some exemptions for regulated entities like banks and insurance companies. Companies formed after January 1, 2024, must register with FinCEN within 30 days; companies formed before January 1, 2024, have until January 1, 2025, to provide the required information to FinCEN.

Failure to timely file a Beneficial Ownership report may result in penalties of \$500 per day and criminal penalties including a \$10,000 fine and/or up to two years imprisonment.

The Beneficial Ownership Rule does not impose any obligations on real estate agents, unless they are a Beneficial Owner of a reporting company.

REAL ESTATE REPORTS

In August 2024, the Financial Crimes Enforcement Network (FinCEN) issued a final rule, effective December 1, 2025, that imposes reporting and recordkeeping requirements for non-financed, residential real estate transactions and transfers of real estate. The final rule requires certain real estate professionals to file reports for non-financed residential real estate transactions, and transfers of real estate to trusts or legal entities.

The Real Estate Report for these transactions requires information regarding:

- A transferee entity or transferee trust;
- Beneficial ownership for the legal entity or trust receiving the property;
- The business filing the report;
- The residential real property being sold or transferred.
- The transferor (the seller);
- Any payments made, including account level information for the source of payments.

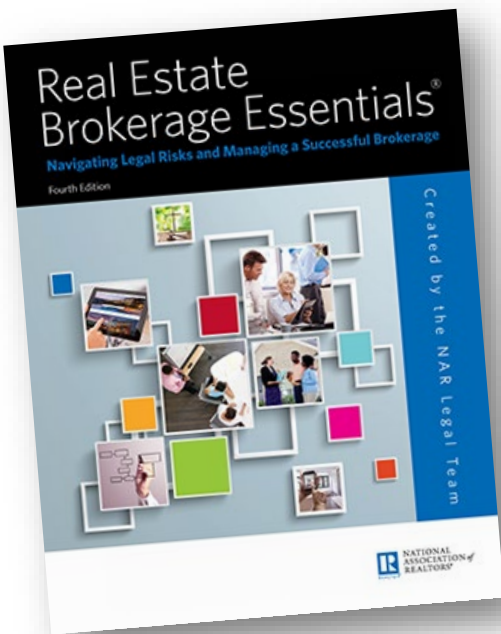
The purpose of the new reporting and recordkeeping requirements is to address money laundering loopholes and vulnerabilities that bad actors exploit. FinCEN expects settlement agents, title insurance agents, escrow agents, and attorneys primarily to be responsible for reporting, however, real estate agents are not specifically exempt from reporting.

Risk Reduction Tips

1. If your company was formed before January 1, 2024, file a Beneficial Ownership report with FinCEN **before January 1, 2025**.
2. Confirm with the closing agent or title company who will file the report for any non-financed real estate transaction.
3. Obtain and keep a copy of the real estate report for your files.

Resources

- [Beneficial Ownership Information Rule & Information](#)
- [Window to the Law: Updates to Anti-Money Laundering Rules](#)
- [NAR Washington Report on FinCEN Rule](#)
- [NAR Anti-Money Laundering Voluntary Guidelines for Real Estate Professionals](#)
- [FinCEN Residential Real Estate Rule Fact Sheet](#)
- [Frequently Asked Questions on Real Estate Reports](#)



Go to the REALTOR® Store to get a copy of Real Estate Brokerage Essentials®, a comprehensive tool to help brokerages navigate important issues while minimizing legal risk.

“Hot Topics in Broker Risk Reduction” is not legal advice. Always consult your local legal counsel for guidance on specific legal questions.