

Water Rights 101: Unrealized and Undisclosed

Charles R. Porter, Jr.

Assistant Professor, University Programs, St. Edward's University

3001 S. Congress, Box 482

Austin, Texas 78704

Website: www.charlesporter.com

Telephone: 512-627-3793

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I. Introduction

Almost all Texans, when asked, profess confusion about water rights. Perhaps the best way to describe the vast majority of Texans' relationship with water rights is *unrealized* and in regards to everyday real estate transactions, *undisclosed*. Even though our drought-plagued state now struggles with seemingly unsolvable thirst issues, the public generally does not realize their water rights nor do they typically disclose the regulatory and legal duties associated with the particular property for sale to potential buyers while they are making their decision to purchase.

Water rights in Texas vary between water flowing on the surface and water underground, vary from regulatory agency to regulatory agency, vary from place to place, and vary from time to time. A good example of the "conventional wisdom" that water rights in Texas are convoluted and at times in the recent past, incomprehensible, is found in a ruling in 1955 made by Federal Judge James V. Allred, a former attorney general and governor of Texas. Allred wrote,

For years it has been a matter of common knowledge that the Texas water laws and decisions are in hopeless confusion; that even if they are clear as some attorneys profess to believe them, their application and administration would be difficult ...¹

When a well-known jurist such as Judge Allred expresses confusion and frustration with our water laws and decisions, *in a published decision nonetheless*, it is understandable why the general public may share his feelings. Still

today, few Texans understand the wider view of the legal, social, and economic consequences of our water rights system.

Water rights are the most fundamental "stick" in the "bundle of sticks"² that determine all the "property rights" and much of the market value of any real property in Texas. Real estate adjacent to surface water, with surface water irrigation diversion rights, with groundwater irrigation rights, and with large amounts of fresh potable groundwater simply sells at higher prices, and at times, at many multiples higher than land without adequate water. It can be said water renders land its value in most of the rural areas of our state.

Why else is it important to know about water rights in Texas? In addition to the significant impact water rights have on the value of real property, statutory obligations have created a need to understand water rights because all known defects in real property must be disclosed to any potential purchaser during the time the purchasers are making their decision to buy. This duty to disclose any defect known, *including a defect in water rights*, is shared by sellers and their real estate agents. Buyers must know about the water rights to a property they are considering and therefore they must have to know the questions to ask. As water becomes scarcer throughout our state due to population growth and our recurring droughts, the need for sellers, buyers, and real estate agents to fully understand the water situation associated with any property for sale has become critical.

Today, assessing the water characteristics of any particular property presents unique challenges to buyers, sellers, lessors, lessees, and real estate agents. The water scarcity predicted in our future requires potential buyers to consider a variety of heretofore less often considered assessment criteria. Likewise, the potential of future water scarcity requires sellers and their real estate agents to exercise extreme caution

¹ Martinez v. Maverick County Water Control and Improvement District No. 1, 5th Cir., 1955, 219 F. 2d 666,670.

² Judon Fambrough of the Texas Real Estate Center uses the "bundle of sticks" phrase in his writings and teachings - very

appropriately. "Real property" is defined as land and all the things that are attached to it.

and prudence in their duties of disclosure regarding the water situation of any property being offered for sale.

To further complicate a confusing and contradictory myriad of state water regulations, Texans must keep one other very important consideration in mind – several United States government agencies have supra-legal³ authority over Texas water policy either directly or indirectly. Agencies such as the Environmental Protection Agency and the United States Fish and Wildlife Service promulgate rules that can significantly affect water rights, the congress passes laws which affect water rights, and the federal courts issue rulings which historically have drastically modified water policy in Texas.

Most Texans' understanding of their water right goes only as far as their ability to read the monthly water bill; as long as the faucet turns and water flows, assuming they pay the monthly bill, their water right is limited only by their ability to pay. The ubiquitous press reports and everyday experience proves to all but the most “asleep-at-the-wheel” Texan that we are in the throes of a prolonged, record-setting drought with little relief in sight. Yet, even as eyewitnesses to the devastation of water scarcity all around us, still the great majority of Texans do not have the most basic knowledge of how water rights are determined and regulated in their state. The legislature, the state agencies,

the real estate industry, and our educational institutions have offered the public little, if any, support in gaining this knowledge. Our ongoing drought and the shortages of water we are predicted to face in our future⁴ coupled with the obvious impact water has on our everyday lives, *especially our property values*, we absolutely must educate our citizens about water rights in Texas. Considering the sad realities and terrible consequences of our water shortages now and possibly in our future, the formidable challenge for our leaders is to find a way for the citizens of Texas to overcome the unrealized and undisclosed nature of their water rights.

Texas Water Rights Overview

Determining a water right in Texas depends on which of three geological containers⁵ holds the water. The first container is **surface water** or water that flows on the surface of the ground in a watercourse.⁶ The State of Texas owns the water in a watercourse, held in trust for the citizens of the state. The Texas Commission on Environmental Quality (TCEQ) regulates use of surface water in Texas by a system of water rights.⁷ The TCEQ, through its authority in allocating water rights essentially oversees the 17 statewide river authorities and 4 Watermasters⁸ as well.

³ Superior authority. “Supra” means above in Latin.

⁴ The Texas Water Development Board’s (TWDB) State Water Plan for 2012 asked, “Do we have enough water for the future?” Their startling and unequivocal answer was: “***We do not have enough existing water supplies today to meet the demand for water during times of drought.***” In the event of severe drought conditions, the state would face an immediate need for additional water supplies of 3.6 million acre-feet per year with 86 percent of that need in irrigation and about 9 percent associated directly with municipal water users. Total needs are projected to increase by 130 percent between 2010 and 2060 to 8.3 million acre-feet per year. In 2060, irrigation represents 45 percent of the total and municipal users account for 41 percent of needs.”

⁵ The term “geological container” to describe water types in Texas can generally be traced to the fine work of Dr. Ron Kaiser of Texas A & M University.

⁶ “Watercourse” in Texas law is not found in the statutes but in the 1925 case *Heofs v. Short*, 273 S.W. 785 (Tex. 1925). “When it is said that a stream in order to be a natural water course to which water rights attach must have bed, banks, a current of water, and a permanent source of water supply, we have only described in detail such physiographic and meteorological characteristics as make the

use of the stream for irrigation practicable. When it is once shown that the waters of a stream are so confined and persistent in their course, and flow with such frequency and volume that it is both practicable and valuable to irrigate therefrom, it is a stream to which such water rights attach.”

With reference to the phrase ‘definite and permanent source of supply of water’, frequently used by the courts as describing a necessary requisite of an irrigable stream, all that is meant is that there must be sufficient water carried by the stream at such intervals as may make it practicable to irrigate from or use the stream. . . . The authorities frequently say that a natural watercourse must have a permanent source of water supply. This however merely means that the stream must be such that similar conditions will produce a flow of water, and that these conditions recur with some degree of regularity, so that they establish and maintain a running stream for considerable periods of time. Farnham on Waters, Vol. 2, § 457; Ruling Case Law, Vol. 27, pp. 1065, 1066; Kinney on Irrigation, Vol. 1, § 306.”

⁷ There are 17 river authorities in Texas and a number of other special districts authorized by the legislature.

⁸ On April 21, 2014 TCEQ Chairman Bryan W. Shaw signed an order 2013-0174-WR that “partially granted” the Petition for the

The second geological container is known as **diffused surface water** or rainwater that runs off your roof or over the surface of your land without flowing in a stream or channel. The water in this container is owned by the landowner. The TCEQ ostensibly oversees this geological container, but there is no record of any hearings or rulings in the archives.

The third container is **groundwater** or water held underground in aquifers and pools. Ownership of groundwater in Texas was debated for many decades, but in the fall of 2011 the debate about ownership of groundwater ended for all practical purposes: The Texas Legislature passed a bill (generally known as Senate Bill 332 by Fraser) which states “The legislature recognizes that a landowner owns the groundwater below the surface of the landowner’s land as real property.” The bill was signed into law by Governor Perry, effective September 1, 2011. Groundwater is regulated by 99 Groundwater Conservation Districts (GCDs) with 99 different sets of rules and regulations. Not all of Texas is under the jurisdiction of a GCD either. Certain special groundwater districts have been created by the legislature, perhaps the best known is the Edwards Aquifer Authority, which regulates the groundwater in the aquifer of the same name. Most citizens in these jurisdictions are unaware of these regulatory agencies. None of the mandatory Seller's Disclosure Notices used around the state contain language about GCDs with one exception; the Austin Board of Realtors revised their Seller's Disclosure Notice in April 2014 (see Appendix 3).⁹

appointment of a watermaster in the Brazos River Basin. This will bring the number of watermasters to 4 the others being the Concho River Watermaster, the South Texas Watermaster, and the Rio Grande Watermaster. The Order states: “NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT: 1. The Petition for the appointment of a watermaster in the Brazos River Basin is partially granted.” (The Petition was “partially granted” because only the Lower Brazos River Basin was included.) Section 2 of the Order states: “The ED shall appointment a watermaster with jurisdiction over the Lower Brazos River Basin, which will consist of all water rights holders in the Brazos River Basin including Possum Kingdom Lake and below that Lake in the Brazos River Basin.”

II. The Unrealized and Undisclosed

A. Surface Water Regulators and Regulations

The “buck-stops-here” surface water regulator in Texas is the TCEQ. Generally, a permit is required from TCEQ in order to use surface water in Texas. According to the TCEQ, “. . . 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. These exempt uses allow anyone to use surface water without getting permission.”¹⁰ Domestic and livestock use, wildlife management use, and emergency use by fire departments and other similar public services comprise the bulk of these exemptions.

Surface water rights in Texas are fully allocated and have been for years. It is likely that the surface water found any place west of IH 35 in Texas can be said to be over allocated, at least on paper, due to the nightmarish drought. The decades long implementation of the Water Rights Adjudication Act of 1967 clarified individual surface water rights for agricultural (generally irrigation), industrial, municipal, and other specific uses. The 17 river authorities (some classify 3 more special districts as “river authorities”) promulgate regulations regarding surface water also under the broad purview of the TCEQ.

An example of the public's lack of knowledge about surface water regulations is found in the all but standard question I am asked about lake water use. Most often this question comes from Lake Travis property owners or potential purchasers of land there: “May I pump water from the lake to my home since I am adjacent to

⁹ The Austin Board of Realtors revised their Sellers’ Disclosure Notice Form to add this to paragraph 7 – “[Y] [N] Any portion of the property in a groundwater conservation district as defined by Texas Water Code, Chapter 36? Please see tceq.texas.gov. Go to Water. Click on Groundwater Planning and Assessment, then Groundwater Conservation Districts and look for the Map of Texas GCDs.”

¹⁰ <http://www.tceq.state.tx.us/publications/gi/gi-228.html#download/file> - “Rights to Surface Water in Texas” Texas Commission on Environmental Quality, GI-228 (Rev. 3/09).

the water?" My answer is "no, you must obtain a permit from the Lower Colorado River Authority to do so." More often than I wish I had to admit, I am next privy to a rather lengthy uniformed and incorrectly reasoned discussion of why the questioner has riparian rights that overrule the LCRA's regulations, that they are going to take the water anyway, and cannot wait to see the LCRA in court. Usually the questioner compliments their comments with a rave about how the state needs to stay out of their business. Yet, considering the potential severity of the fines for violation of water use on a state owned lake, none of the mandatory disclosure notices either mention the TCEQ's authority over the use of surface water or the river authorities' jurisdiction within their boundaries. There is another level of regulation that even fewer Texans understand - the jurisdiction and duties of our 4 state watermasters.

Our water rights system and management is rooted in our Spanish heritage developed over the past 300 years.¹¹ The role of the watermaster is one of the oldest regulatory and management of water in Texas. The first *mayordomo*¹² in what would become later the state of Texas was appointed by the King of Spain in 1732 in Villa San Fernando, the predecessor village to modern San Antonio. The work of the *mayordomo* in Spanish Colonial Texas was very similar to the work of our modern watermasters. Today, according to the TCEQ,

Watermasters divide the water in their areas based on the adjudicated water rights, regulate as necessary the controlling works of reservoirs and diversion works, and monitor stream flows, reservoir levels, and water use. Watermaster programs ensure compliance with water rights by monitoring stream flows, reservoir levels, and water use. Watermasters also

coordinate diversions and regulate reservoirs as needed to prevent the wasting of water or its being used in quantities beyond a user's right.

Before diverting, a water right holder must notify the watermaster of the intent to divert at a specific time and the specific amount of water to be diverted. If the water is available and the water right holder will not exceed its annual authorized appropriation of water, the watermaster then authorizes the diversion and records this against the right. The watermaster programs include staff "deputies" who perform regular field inspections of authorized diversions to insure compliance with the water right.¹³

Again, none of our disclosure forms mention the word "watermaster" but the decisions made by the 4 Texas watermasters can open the door for misunderstanding and at times, litigation. For example, in the Concho River Watermaster's jurisdiction, those owning valid rights to divert water from the river have not been able to take their full appropriation of water for many years. Here is an example of the problems that can occur when the watermaster's regulations and practices are not disclosed to a potential purchaser of land. It is normal and quite acceptable for sellers of real property and their real estate agents to advertise the positive features of the property being offered for sale. Without doubt, a prior appropriative right, especially if the right is a senior diversion right, to take water from the Concho for irrigation purposes is a valuable feature of any property for sale. Yet, caution must be taken to fully and accurately disclose the details about the actual process and true volume of water the watermaster allowed to be taken.

¹¹ Charles Porter. *Spanish Water/Anglo Water*. 64. (Texas A & M University Press, 2009); Charles Porter. *Sharing the Common Pool: Water Rights in the Everyday Lives of Texans*. 95-104. (Texas A & M University Press, 2014).

¹² Generally known as "ditch boss" or in modern usage, a watermaster; Porter *Spanish*, 64.

¹³

http://www.tceq.state.tx.us/permitting/water_rights/wmaster/wmaster.html/#about

Assume the seller has a senior appropriative right to divert 30 acre feet¹⁴ annually from the Concho, but the watermaster has only allowed diversions equaling to 10 acre feet annually in the past few years. The seller and real estate agents must modify their representations to inform the potential buyer that although the senior water right allows diversion of up to 30 acre feet a year, the amount diverted has not exceeded 10 acre feet for these years. If not, especially since appropriative water rights sell for between \$5,500 per acre foot up to \$10,000 per acre foot, the buyer may have claim for misrepresentation against the seller and real estate agent. This simple example is just one of many, and if surface water continues to grow scarcer hence more valuable, surely more opportunities for misunderstandings will occur. Unfortunately, groundwater regulations are much more complicated across our state and just as unrealized and undisclosed.

B. Groundwater Regulators and Regulations

The legislature's "preferred" method of groundwater management is by Groundwater Conservation Districts (GCDs), first authorized by an act of the 1949 Texas Legislature.¹⁵ The first district was formed in 1951. There are now 99 GCDs in Texas covering only a portion of the state. These districts are formed by local election but can be formed by the TCEQ or by direct actions of the legislature. Each district has its own set of rules and regulations, its own definition of terms such as "domestic and livestock uses," and its own permitting requirements. Most of the districts have boundaries set by county lines, as if the groundwater below recognized and followed political boundaries.¹⁶

The general public in Texas, unless they are very savvy or have discovered they had to apply for an irrigation permit from their water well driller or other source, has little or no knowledge that GCDs exist, even when they are in the

jurisdiction of the few that have ad valorem taxation authority.¹⁷ GCD managers all over the state express their frustration in the lack of involvement by their constituency; few citizens other than those directly requesting a special use permit, ever attend their Board of Directors meetings. The public simply rarely understands or knows their property lies within the jurisdiction of a GCD. For emphasis I repeat, not one mandatory sellers' disclosure notice in our state mentioned the words Groundwater Conservation District or GCD, 65 years after GCDs were authorized by the legislature until April 2014.

What can happen if a seller or their real estate agent fails to disclose to a potential buyer that the property lies within the jurisdiction of a GCD? Here is one example of how a real estate buyer could find themselves victim of a misrepresentation by either the seller or the seller's agent potential damages. In the Barton Springs Edwards Aquifer Groundwater Conservation District, domestic and livestock wells are exempt from permit. However, if a water provider delivers water to the property line and the owner of the property ties in and uses the water for domestic and livestock use, then their previously exempt from permit water well now needs a permit. Same as before, the seller and the seller's agent may have touted the feature of the property as having two water sources, the well and the public water line. Few (if any) sellers or their real estate agents are aware of this rule, yet they should be if they want to avoid misrepresentation and a possible lawsuit. The drought will exacerbate this situation as our water scarcity increases. There will be a great deal of pressure put upon GCDs to enforce their rules and regulations. A source of this pressure will be from neighbors "tattling" on neighbors by informing GCDs about potential violations of rules.

¹⁴ An acre foot of water equal 325,851 gallons.

¹⁵ Chapters 35 and 36 of the Texas Water Code are the statutory base for Groundwater Conservation Districts.

¹⁶ Charles Porter. "Financing Groundwater Conservation Districts in Texas: Results of a Preliminary Study." *Texas Water Journal* 4, no. 1 (2013): 57-59.

¹⁷ The GCD taxing authority and tax rate is listed on all annual ad valorem tax invoices in Texas.

The Texas Water Development Board offers this list of Groundwater Conservation District facts:

- There are 99 groundwater conservation districts in Texas: 97 are confirmed (note: this estimate includes several districts that do not require confirmation) and two have yet to be confirmed by voters through local elections.
- The first district (High Plains Underground Water Conservation District No. 1) was created in the Texas Panhandle in 1951.
- The smallest district covers an area of about 31 square miles (Red Sands Groundwater Conservation District in Hidalgo County) and the largest district (High Plains Underground Water Conservation District No. 1) an area of approximately 12,000 square miles.
- A total of 174 counties are either fully or partially within a groundwater conservation district.
- There are 62 single-county districts in Texas, and 37 that cover more than one county.
- While 96 of the 99 existing districts overlie a major aquifer, only 64 of these districts overlie a minor aquifer.
- The total reported groundwater usage in the entire State in the year 2008 was approximately 9.7 million acre-feet.
- In the same year, the total reported groundwater usage in all the districts (confirmed and unconfirmed) in the State was approximately 8.3 million acre-feet.
- Districts over the Ogallala Aquifer accounted for approximately 5.6 million

acre-feet of this usage, mostly for irrigated agriculture.

- In 2008, Throckmorton County had the lowest amount of reported groundwater usage (28 acre-feet) and Hale County the highest (540,886 acre-feet).
- The first groundwater management plan to be approved was the Gonzales County Underground Water Conservation District's plan in 1998.¹⁸

While there are many special water districts in Texas, there are two special districts created by the legislature in the Houston area, the Harris-Galveston Subsidence District and the Fort Bend Subsidence District. The Harris-Galveston Subsidence District is a special purpose district created by the Texas Legislature in 1975. The district was created to provide for the regulation of groundwater withdrawal throughout Harris and Galveston counties for the purpose of preventing land subsidence, which leads to increased flooding. The district's enabling legislation is found in Chapter 8801 of the Special Districts Code. Here are the substantive sections of the Harris-Galveston Subsidence District rules pertaining to drilling new water wells:

Rule 5.1 Registration of New Wells:

- a. All new wells, except leachate wells, extraction wells, injection wells, monitoring wells, and dewatering wells, must be registered by the well owner, well operator, or water well driller prior to being drilled. Registration may be submitted by mail or electronically using a form provided by the District. The District staff shall review the registration and make a preliminary determination on whether the well meets the exclusions or exemptions provided in Rule 5.8, and shall inform the registrant of their determination within five business days. If the preliminary determination is that the well is

¹⁸ Texas Water Development Board.

excluded or exempt, the registrant may begin drilling immediately upon receiving the approved registration.

b. It shall be a violation of these Rules for a well owner, well operator, or water well driller to drill any well without the approved registration form filed with the District.

Rule 5.2 General Permitting Policies and Procedures:

a. Permit Requirement: Except as provided in Rule 5.1, the well owner, well operator, or any other person acting on behalf of the well owner, must obtain a permit before a well may be drilled or operated. A well must be permitted prior to drilling and must remain permitted unless and until the well plumbing and power source are disconnected and the well casing or discharge pipe is capped.

Rule 5.8 Exclusions and Exemptions:

a. Single-Family Dwelling Wells
Excluded: A well with a casing diameter of less than five inches that serves only a single-family dwelling is excluded from the permit requirements of these Rules. Serving only a single-family dwelling means the well supplies groundwater for domestic use inside one home located on property that does not have an available alternative water supply. Domestic use includes water used inside the home for any purpose and may also include use outside the home for landscape irrigation, irrigating a garden or providing water to domestic livestock.

b. Exemptions: The permit requirements do not apply to: (i) windmills serving a well with a casing diameter of four inches nominal or less, (ii) monitoring wells, (iii) leachate wells (iv) extraction

wells, (v) injection wells, or (vi) dewatering wells.¹⁹

Notice that domestic use wells are exempt from permit in the Harris-Galveston Subsidence District, but still have to be registered and are limited to a five inch casing. This is consistent with typical statewide policy; Texas places domestic and livestock use of water as a top priority. While there are differing definitions of “domestic and livestock” use across the 99 GCDs, this type of use does not require a permit. In some districts, registration of the well is not even required. None require a meter to keep up with volume used.

Typically the GCD exemptions from a permit for a domestic and livestock use well are based upon limits as to the gallons per day capability of the wells to deliver certain amounts of water. The key word in the typical GCD rules to determine an exemption from permit for a domestic and livestock use well is “incapable.” GCDs allow domestic and livestock use wells “incapable of delivering up to 10,000 gallons a day” in a few districts to the typical GCD’s “incapable of delivering up to 25,000 gallons a day,” to be exempt from permit. I have asked many GCD managers what the word “incapable” means in their rules. Other than the obvious, does it mean the casing must be in limited in size, the pump must be limited in power or strength, or something else? None have yet been able to answer the question satisfactorily. The real problem arises when, as a few have done in the past, a GCD lowers the number of gallons from 25,000 gallons a day to 10,000 gallons a day. Surely it cannot mean the well owner would have to pull the casing and substitute a smaller size? This would be prohibitively expensive for most people. If it means changing the size of the pump, the work would still be expensive, but it could be done; pumps do wear out over long periods of time. Consider this fact. One inch of rain on one acre of ground always equals 27,154 gallons. 25,000 gallons per day is an outrageous amount of water to use. Even

¹⁹ <http://www.hgsubsidence.org/>

10,000 gallons per day is certainly more than anyone using the water for domestic and livestock use could use without waste.

The other special water district in the Houston area is the Fort Bend Subsidence District which was created by the Texas Legislature in 1989 as a conservation and reclamation district (Act of May 26, 1989, 71st Leg., R.S., ch. 1045, 1989 Tex. Gen. Laws 4251). The District's purpose is to provide for the regulation of the withdrawal of groundwater within the District to prevent subsidence that contributes to flooding, inundation or overflow of areas within the District, including rising waters resulting from storms or hurricanes. The District's boundaries are defined as all the territory within Fort Bend county. Here are the substantive sections of the Fort Bend Subsidence District rules pertaining to drilling new water wells:

RULE 5.1 REGISTRATION OF NEW WELLS:

- a. It is a violation of these rules for a well owner, well operator, or water well driller to drill any well without the approved registration form filed with the District.
- b. New well registration may be by mail or telephonic document transfer, on a form provided by the District. The District staff will review the registration and make a preliminary determination on whether the well meets the exclusions or exemptions provided in Rule 5.7, and inform the registrant of their determination within five business days. If the preliminary determination is that the well is excluded or exempt, the registrant may begin drilling immediately upon receiving the approved registration. All new wells, except leachate wells, monitoring wells, and dewatering wells, must be registered

by the well owner, well operator, or water well driller prior to being drilled.

RULE 5.2 GENERAL PERMITTING POLICIES AND PROCEDURES:

- a. Permit Requirement: The well owner, well operator, or any other person acting on behalf of the well owner, must obtain a permit before a well may be drilled or operated. A well must be permitted prior to drilling and must remain permitted unless and until the well plumbing and power source are disconnected and the well casing or discharge pipe is capped.

RULE 5.7 EXCLUSIONS AND EXEMPTIONS:

- a. Single-Family Small Wells Excluded: A well with a casing diameter of five inches nominal or less that primarily serves a single-family dwelling is excluded from the permit requirements of these rules.
- b. Single Commercial Wells: The permit requirements do not apply to persons owning only one commercial well within the District with an inside casing diameter of five inches nominal or less.
- c. Exemptions: The permit requirements do not apply to: (i) windmills serving a well with a casing diameter of five inches nominal or less, (ii) monitoring wells, (iii) leachate wells, or (iv) dewatering wells.²⁰

There are three traditional GCDs in the Houston area. The Lone Star Groundwater Conservation District covers Montgomery County and was formed in November, 2011. The Bluebonnet Groundwater Conservation District covers Austin, Waller, Grimes, and Walker County and was formed in November, 2002. Another district on the periphery of Houston formed in

²⁰ <http://www.fbsubsidence.org/>

November, 2002 is the Bravos Valley Groundwater Conservation District which covers Brazoria County. These districts have varying sets of rules, but domestic and livestock use wells are generally exempt from permit.

Liberty, Chambers, Jefferson, and Washington counties have not chosen to have a GCD at this time. Unique problems exist in the counties without a GCD to regulate their groundwater. They are subject to the “rule of capture” which is usually referred to as the “law of the biggest pump or he who has the biggest pump gets all the water.”²¹ Last year I offered a hypothetical situation during my presentation at the Lone Star Water Forum in Brenham. The fifth annual Forum’s title was “Should Washington County have a Groundwater Conservation District?” My hypothetical situation involved a developer planning a golf course community near Washington County and in the jurisdiction of the Bluebonnet GCD. In lieu of obtaining well permits, meeting spacing rules, and possibly being limited on the volume of water withdrawals from the well or wells by Bluebonnet rules, the developer purchases an acre or two just across the county line in Washington County to drill the well or wells needed and pump any volume of groundwater without any restriction to serve the new subdivision’s homes, recreational facilities, and golf course.²² Many in the audience considered my hypothetical to be unrealistic, but just the other day, my hypothetical became a reality in Comal County in the New Braunfels area.²³

A proposed development on 345 acres east of the small city of Fair Oaks Ranch close to the county line of Comal County lies mostly in Kendall County under the Cow Creek Groundwater Conservation District jurisdiction. If the water wells to service the development are dug in Kendall County, then only 86 residences could be built in compliance with the Cow

Creek GCD rules. Yet a very small amount of the land lies in Comal County which has no GCD hence there is no limit to groundwater pumping if the water well or wells are drilled in Comal County which then allows the developer to increase the size of the subdivision to 635 homes.²⁴

This situation points out the fallacy of groundwater management based on GCDs set on county lines and not the actual groundwater in place. Doug Miller, a member of the Texas House of Representatives from the area said, “What is happening in Fair Oaks is a prime example of what I’m trying to prevent – potentially unregulated and unmanaged groundwater pumping on a large scale.” Following up on Miller’s comments, Milan J. Michalec, President of the Hill Country Alliance said, “It (the development) would erode the ability of Cow Creek to manage the groundwater. The water source doesn’t respect county boundaries.” In no way am I proposing any wrong doing on the part of the developer, he is acting prudently as a businessman has the right to do.

The troublesome thing is that even though the legislature since 1949 has several times decreed that the preferred method of groundwater management in Texas is by local GCDs, there are still, 65 years later, large areas of Texas without any regulatory authority to manage the spacing, depth, or volume of groundwater withdrawn, even if the same common pool of groundwater is shared between areas with regulations and those without.

I am the author of and teach statewide “Water Rights for Texas Agents,” a continuing real estate education course. The students who find themselves in a district with regulations sharing the same underground common pool of water with an area without any regulations often

²¹ Charles Porter. “The History of W. A. East v. Houston and Texas Central Railway Company, 1904: Establishment of the Rule of Capture in Texas or ‘He Who Has the Biggest Pump Gets the Water’”. *East Texas Historical Journal* 50, no. 2 (Fall 2012): 107.

²² There are three general court produced limitations to the rule of capture: one cannot take groundwater maliciously to harm a neighbor, one cannot take groundwater and waste it, and one

cannot take groundwater and cause subsidence to neighboring properties.

²³ MacCormack, Zeke. “Fair Oaks Ranch project raises water concerns in Comal County”. *San Antonio Express-News*, May 8, 2014.

²⁴ *Ibid*.

wonder why their GCD makes the effort to manage only a part of the common pool. There is little disagreement by scholars and regulators alike: there is no recognition of the correlative rights of landowners to groundwater in Texas.²⁵ If the drought intensifies the only source of water in many areas of Texas may be groundwater. Who or what will help protect those who live in the areas without a GCD? Should not this fact and other significant facts about water regulations or the lack thereof be disclosed to potential buyers of real estate in these areas? Absolutely, but until recently, not one Seller's Disclosure Notice in Texas mentioned any water regulations.

III. Seller's Disclosure Notices

A. Texas Property Code 5.008

Since 1993, the concept of "caveat emptor" or "let the buyer beware" no longer exists in single family residential transactions in Texas. Sellers of single family residential properties, whether represented by a real estate agent or not, are required to disclose known defects to any potential buyer while the buyer is making the decision to purchase the property. The 73rd Texas Legislature added section 5.008, Sellers' Disclosure of Property Condition (see Appendix 1), to the Texas Property Code effective January 1, 1994: "A seller of residential real property comprising not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice as prescribed by this section . . ."²⁶ From this revision to the property code came a number of locally developed Sellers' Disclosure Notices, the birth of the home inspection industry, and of course, hundreds of lawsuits.²⁷

²⁵ A correlative right assures that each landowner receives his "fair share" of the water in a commonly owned reservoir. [The correlative rights concept in water means] "his property rights are correlative so that each landowner is restricted to such use of the water as is reasonable with respect to his own use and that of the other landowners whose tracts overlie the common reservoir." Clark, *Overview of Groundwater Law and Institutions in United States Border States*, 22 Nat. Res. J. 1007,1011 (1982).

²⁶ Texas Property Code Section 5.008.

The legislative intent for the addition of Section 5.008 to the Property Code is found in the Bill Analysis for H.B. 1081 by Brimer of State Affairs enrolled 7-15-1993, the key phrases of which are:

Direct communication regarding the condition of the property proves beneficial and provides information to a buyer to allow the buyer to make an informed decision. . . . As enrolled H.B. 1081 requires a seller of real property to disclose the condition of the property to a purchaser.²⁸

The State of Texas clearly wants buyers of single family residences to have information about defects to enable the buyers to better assess the risk of purchasing the property.

For over two decades, any defect actually known to the seller and the real estate agents has had to be disclosed to potential purchasers of single family homes.²⁹ Sellers' and real estate agents' duties are similar as to disclosure of all known defects. Typical plaintiff's petitions involving non-disclosure of defects include claims under the Texas Deceptive Trade Practices Act, claims of common law fraud, fraud in the inducement, negligent misrepresentation, and civil conspiracy many times even in situations where there is no single family home on the property.

A prudent seller, agent, or buyer keeps in mind that the source and availability of water to any property or any known defects about the water are absolutely critical items that must be fully and truthfully disclosed. Remember real estate agents are fiduciaries for their clients.³⁰ A real estate agent must be scrupulous and meticulous,³¹ must exercise prudence and caution to avoid misrepresentation in any wise,

²⁷ Since 1987, I have been a named expert witness in over 400 lawsuits nationwide. I estimate in the past decade that at least 50% of the lawsuits involved some kind of disclosure of defects issue.

²⁸ Bill Analysis, Senate Research Center, Austin, Texas.

²⁹ Texas Property Code, 5.008.

³⁰ 22 TAC The Rules of the Texas Real Estate Commission Sections 531.1, 535.2, and 535.156.

³¹ TREC Rules, 22 TAC 531.1.2. Texas Real Estate Commission Ethics MCE Instructor's Manual page 1. "Scrupulously is defined

by acts of commission or omission,³² be up to date on state, local, and national issues involving real estate,³³ exercise judgment and skill in the performance of the work,³⁴ and must inform their client if the agent receives material information related to the transaction.³⁵ The real estate agent must also disclose all known structural defects, or other defects to a purchaser during their decision to purchase.³⁶ Non-disclosure of defects involving access to water and water rights by the sellers and/or their real estate agents potentially creates substantial liability for civil damages in lawsuits. Sellers' Disclosure Notice forms are required, at a minimum, to include this line to disclose information about the water source of the property for sale: "Water Supply: ____ City ____ Well ____ MUD ____ Co-op." Not all farms and ranches have single family residences, but if a single family residence is on a rural property, any defect in the water system or any well's water quality or working status, permit status, or any other known defect must be disclosed to a potential purchaser.³⁷

Other questions on the minimum statutory Sellers' Disclosure Notice form that could involve water conditions if the seller is aware of his or her water rights are:

- Are you (Seller) aware of any item, equipment, or system in or on the property that is in need of repair?³⁸

- Are you (Seller) aware of . . . any notices of violations of deed restrictions or governmental ordinances affecting the condition or use of the Property?³⁹
- Are you (Seller) aware of . . . any condition on the Property which materially affects the physical health or safety of an individual?"⁴⁰

Any pertinent water-related issues must be disclosed in answer to any or all of these questions and supporting documents should be provided to the purchaser prior to making a commitment to buy. Yet, as mentioned earlier, until just this spring, none of the Sellers' Disclosure Notice forms used in our typical real estate transactions included any question to inform the buyer if the property was in the jurisdiction of a Groundwater Conservation District. Amazingly, none yet even has a question which clearly asks if there is an abandoned or unplugged water well on the property.⁴¹

B. State and Local Trade Association Sellers' Disclosure Notices

The Texas Association of Realtors and the Austin Board of Realtors offer Seller's Disclosure Notices for their members to use as do other local boards. These forms contain the minimum information required in the Property Code section 5.008, but add other opportunities for the seller to disclose significant features and defects both current and past of the properties.

as acting in strict regard for what is considered right or proper; punctiliously [paying great attention to detail or correct behavior] exact; painstaking. Meticulously is defined as marked by extreme or excessive care in the consideration of details; careful. Therefore, one can conclude by these definitions that the licensee must perform his or her duties in a way that exhibits a knowledge of what is right and appropriate under the circumstances and with care about details."

³² TREC Rules 22 TAC 531.2.

³³ TREC Rules 22 TAC 531.3.1

³⁴ TREC Rules 22 TAC 531.3.3

³⁵ Texas Occupations Code Chapter 1101, Section 1101.557; TREC Rules 535.2 and 535.156.

³⁶ Texas Occupations Code Chapter 1101, Section 1101.652(b)(3) and (4).

³⁷ Texas Property Code 5.008.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Regardless of whether the property being transferred is in a GCD or not, there is a state law that requires abandoned wells to be plugged according to specifications of the Texas Department of Licensing and Regulation, or in the alternative, at least to be capped in a specified way that prevents ready access by anyone. There are substantial costs associated with both of these, especially the former. A GCD is more likely to enforce the plugging or capping of abandoned wells in their jurisdiction, although some counties either have or are seeking such authority. Some GCDs and counties may have funds available to defray at least part of the cost of those activities, and the availability of such funds should be established before closing. Whether a property has an unplugged or uncapped well on a tract of land being sold and bought is important to determine before or during the transaction process, as it represents at least a contingent liability, and one that a buyer might want the seller to remove as part of the transaction process.

As mentioned before, the Austin Board's notice leads the state as the first and only notice containing a direct question for the seller to disclose the property's location within the jurisdiction of a GCD. The Texas Association of Realtors notice, at this time, has no direct reference to a GCD.

I put together a group of active water rights attorneys and GCD General Managers to write up a new bill to be debated and passed in the upcoming session of the legislature which would amend 5.008 of the property code to add a sentence to disclose if the real property for sale is located in the jurisdiction of a GCD. If our bill passes, all the Seller's Disclosure Notices in the state will be required to be amended to reflect the change.

Our proposed bill adds this sentence on the last page of the 5.008 notice:

[6. Are you (Seller) aware of any of the following?

Write Yes (Y) if you aware, write No (N) if you are not aware.]

_____ Any portion of the Property in a Groundwater Conservation District or other district which has authority to regulate groundwater under Chapter 36 of the Texas Water Code?

We have high hopes that this simple change will make significant progress in educating at least the residential real estate buying and selling public and the associated real estate industry. (I am trying to convince title companies to pick up GCDs on their Commitment for Title Insurance Schedule B and/or Cs to cover notice of these regulatory agencies on all real properties being sold in Texas.) The legislature added a sentence to disclose rainwater harvesting systems in the last session which was appropriate, so this even more basic and important change to disclose GCDs, albeit 65 years after their birth, seems obvious to me to be the right thing to do for the public.

IV. Conclusion – Drought, Climate “Destruction,” and Litigation in Reaction to Shortages

The drought is terrible across most of the state, especially in the panhandle. Wildfires such as the Bastrop area fire in 2011, the ongoing fire north of Amarillo, and the hundreds of other wildfires that have raged across Texas during this drought have left ugly visible scars on our land and many a Texan's psyche. The new term for “climate change” or “global warming” coming out of Washington is “climate destruction.” I render no opinion on climate or climate change matters here. I am a simple Boy Scout – I was taught to “Be Prepared” for the worst - and our leaders better plan for the absolute nightmare of years, if not decades, of continued drought. Right of way acquisition alone for interbasin transfers of surface or groundwater will take many years. Right of way is on no one's radar other than mine; I have discussed this problem in all of the 104 water speeches I have given around the state since July 2012.

History informs us vividly that during times of great economic or drought-induced stress litigation increases as people seek remedies for damages perceived or real. I have been named as an expert witness in over 400 cases nationwide since 1987. In the past decade more than half of the opinions I rendered have involved Seller's Disclosure Notices and real estate agents' fiduciary duties and duties in defect disclosure. As the drought continues and regulations are more stringently enforced, claims will surely include water issues.

It is not too late to educate our citizenry so they can *realize* their water rights and meet their duties to *disclose* water issues related to their real property. The negative consequences for the future of Texans if water rights continue to be unrealized and undisclosed are simply too great to be ignored any longer.

Appendix - 1

5.008 Seller's Disclosure Notice

(no mention of GCDs)

Courtesy of the Texas Real Estate Commission



10-23-2013

APPROVED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

SELLER'S DISCLOSURE OF PROPERTY CONDITIONCONCERNING THE PROPERTY AT _____
(Street Address and City)

THIS NOTICE IS A DISCLOSURE OF SELLER'S KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED BY SELLER AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PURCHASER MAY WISH TO OBTAIN. IT IS NOT A WARRANTY OF ANY KIND BY SELLER OR SELLER'S AGENTS.

Seller ☐ is ☐ is not occupying the Property. If unoccupied, how long since Seller has occupied the Property? _____

1. The Property has the items checked below [Write Yes (Y), No (N), or Unknown (U)]:

<input type="checkbox"/> Range	<input type="checkbox"/> Oven	<input type="checkbox"/> Microwave
<input type="checkbox"/> Dishwasher	<input type="checkbox"/> Trash Compactor	<input type="checkbox"/> Disposal
<input type="checkbox"/> Washer/Dryer Hookups	<input type="checkbox"/> Window Screens	<input type="checkbox"/> Rain Gutters
<input type="checkbox"/> Security System	<input type="checkbox"/> Fire Detection Equipment	<input type="checkbox"/> Intercom System
	<input type="checkbox"/> Smoke Detector	
	<input type="checkbox"/> Smoke Detector-Hearing Impaired	
	<input type="checkbox"/> Carbon Monoxide Alarm	
	<input type="checkbox"/> Emergency Escape Ladder(s)	
<input type="checkbox"/> TV Antenna	<input type="checkbox"/> Cable TV Wiring	<input type="checkbox"/> Satellite Dish
<input type="checkbox"/> Ceiling Fan(s)	<input type="checkbox"/> Attic Fan(s)	<input type="checkbox"/> Exhaust Fan(s)
<input type="checkbox"/> Central A/C	<input type="checkbox"/> Central Heating	<input type="checkbox"/> Wall/Window Air Conditioning
<input type="checkbox"/> Plumbing System	<input type="checkbox"/> Septic System	<input type="checkbox"/> Public Sewer System
<input type="checkbox"/> Patio/Decking	<input type="checkbox"/> Outdoor Grill	<input type="checkbox"/> Fences
<input type="checkbox"/> Pool	<input type="checkbox"/> Sauna	<input type="checkbox"/> Spa <input type="checkbox"/> Hot Tub
<input type="checkbox"/> Pool Equipment	<input type="checkbox"/> Pool Heater	<input type="checkbox"/> Automatic Lawn Sprinkler System
<input type="checkbox"/> Fireplace(s) & Chimney (Wood burning)		<input type="checkbox"/> Fireplace(s) & Chimney (Mock)
<input type="checkbox"/> Natural Gas Lines		<input type="checkbox"/> Gas Fixtures
<input type="checkbox"/> Liquid Propane Gas	<input type="checkbox"/> LP Community (Captive)	<input type="checkbox"/> LP on Property
Garage: <input type="checkbox"/> Attached	<input type="checkbox"/> Not Attached	<input type="checkbox"/> Carport
Garage Door Opener(s):	<input type="checkbox"/> Electronic	<input type="checkbox"/> Control(s)
Water Heater:	<input type="checkbox"/> Gas	<input type="checkbox"/> Electric
Water Supply: <input type="checkbox"/> City	<input type="checkbox"/> Well <input type="checkbox"/> MUD	<input type="checkbox"/> Co-op
Roof Type: _____	Age: _____	(approx.)

Are you (Seller) aware of any of the above items that are not in working condition, that have known defects, or that are in need of repair? ☐ Yes ☐ No ☐ Unknown. If yes, then describe. (Attach additional sheets if necessary): _____

TREC No. OP-H

(Street Address and City)

2. Does the property have working smoke detectors installed in accordance with the smoke detector requirements of Chapter 776, Health and Safety Code? ☐ Yes ☐ No ☐ Unknown. If the answer to this question is no or unknown, explain (Attach additional sheets if necessary): _____

* Chapter 776 of the Health and Safety Code requires one-family or two-family dwellings to have working smoke detectors installed in accordance with the requirements of the building code in effect in the area in which the dwelling is located, including performance, location, and power source requirements. If you do not know the building code requirements in effect in your area, you may check unknown above or contact your local building official for more information. A buyer may require a seller to install smoke detectors for the hearing impaired if: (1) the buyer or a member of the buyer's family who will reside in the dwelling is hearing impaired; (2) the buyer gives the seller written evidence of the hearing impairment from a licensed physician; and (3) within 10 days after the effective date, the buyer makes a written request for the seller to install smoke detectors for the hearing impaired and specifies the locations for the installation. The parties may agree who will bear the cost of installing the smoke detectors and which brand of smoke detectors to install.

3. Are you (Seller) aware of any known defects/malfunctions in any of the following? Write Yes (Y) if you are aware, write No (N) if you are not aware.

_____ Interior Walls	_____ Ceilings	_____ Floors
_____ Exterior Walls	_____ Doors	_____ Windows
_____ Roof	_____ Foundation/Slab(s)	_____ Sidewalks
_____ Walls/Fences	_____ Driveways	_____ Intercom System
_____ Plumbing/Sewers/Septics	_____ Electrical Systems	_____ Lighting Fixtures
_____ Other Structural Components (Describe): _____		

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

4. Are you (Seller) aware of any of the following conditions? Write Yes (Y) if you are aware, write No (N) if you are not aware.

_____ Active Termites (includes wood destroying insects)	_____ Previous Structural or Roof Repair
_____ Termite or Wood Rot Damage Needing Repair	_____ Hazardous or Toxic Waste
_____ Previous Termite Damage	_____ Asbestos Components
_____ Previous Termite Treatment	_____ Urea-formaldehyde Insulation
_____ Previous Flooding	_____ Radon Gas
_____ Improper Drainage	_____ Lead Based Paint
_____ Water Penetration	_____ Aluminum Wiring
_____ Located in 100-Year Floodplain	_____ Previous Fires
_____ Present Flood Insurance Coverage	_____ Unplatted Easements
_____ Landfill, Settling, Soil Movement, Fault Lines	_____ Subsurface Structure or Pits
_____ Single Blockable Main Drain in Pool/Hot Tub/Spa	_____ Previous Use of Premises for Manufacture of Methamphetamine

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

* A single blockable main drain may cause a section entrapment hazard for an individual.

TREC No. OP-H

5. Are you (Seller) aware of any item, equipment, or system in or on the Property that is in need of repair? ☐ Yes (if you are aware)
☐ No (if you are not aware) If yes, explain. (Attach additional sheets if necessary): _____

6. Are you (Seller) aware of any of the following? Write Yes (Y) if you are aware, write No (N) if you are not aware.

_____ Room additions, structural modifications, or other alterations or repairs made without necessary permits or not in compliance with building codes in effect at that time.

_____ Homeowners' Association or maintenance fees or assessments.

_____ Any "common area" (facilities such as pools, tennis courts, walkways, or other areas) co-owned in undivided interest with others.

_____ Any notices of violations of deed restrictions or governmental ordinances affecting the condition or use of the Property.

_____ Any lawsuits directly or indirectly affecting the Property.

_____ Any condition on the Property which materially affects the physical health or safety of an individual.

_____ Any rainwater harvesting system located on the property that is larger than 500 gallons and that uses a public water supply as an auxiliary water source.

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

7. If the property is located in a costal area that is seaward of the Gulf Intracoastal Waterway or within 14,000 feet of the mean high tide bordering the Gulf of Mexico, the property may be subject to the Open Beaches Act or the Dune Protection Act (Chapter 61 or 63, Natural Resources Code, respectively) and a beachfront construction certificate or dune protection permit maybe required for repairs or improvements. Contact the local government with ordinance authority over construction adjacent to public beaches for more information.

Signature of Seller

Date

Signature of Seller

Date

The undersigned purchaser hereby acknowledges receipt of the foregoing notice.

Signature of Purchaser

Date

Signature of Purchaser

Date

Appendix – 2

Texas Association of Realtor's Seller's Disclosure Notice

(no mention of GCDs)

Courtesy of the Texas Association of Realtors



TEXAS ASSOCIATION OF REALTORS®
SELLER'S DISCLOSURE NOTICE

©Texas Association of REALTORS®, Inc. 2014

Section 5.008, Property Code requires a seller of residential property of not more than one dwelling unit to deliver a Seller's Disclosure Notice to a buyer on or before the effective date of a contract. **This form complies with and contains additional disclosures which exceed the minimum disclosures required by the Code.**

CONCERNING THE PROPERTY AT _____

THIS NOTICE IS A DISCLOSURE OF SELLER'S KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED BY SELLER AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE BUYER MAY WISH TO OBTAIN. IT IS NOT A WARRANTY OF ANY KIND BY SELLER, SELLER'S AGENTS, OR ANY OTHER AGENT.

Seller ☐ is ☐ is not occupying the Property. If unoccupied (by Seller), how long since Seller has occupied the Property? ☐ _____ or ☐ never occupied the Property

Section 1. The Property has the items marked below: (Mark Yes (Y), No (N), or Unknown (U).)

This notice does not establish the items to be conveyed. The contract will determine which items will & will not convey.

Item	Y	N	U	Item	Y	N	U	Item	Y	N	U
Cable TV Wiring				Liquid Propane Gas:				Pump: <input type="checkbox"/> sump <input type="checkbox"/> grinder			
Carbon Monoxide Det.				-LP Community (Captive)				Rain Gutters			
Ceiling Fans				-LP on Property				Range/Stove			
Cooktop				Hot Tub				Roof/Attic Vents			
Dishwasher				Intercom System				Sauna			
Disposal				Microwave				Smoke Detector			
Emergency Escape Ladder(s)				Outdoor Grill				Smoke Detector – Hearing Impaired			
Exhaust Fans				Patio/Decking				Spa			
Fences				Plumbing System				Trash Compactor			
Fire Detection Equip.				Pool				TV Antenna			
French Drain				Pool Equipment				Washer/Dryer Hookup			
Gas Fixtures				Pool Maint. Accessories				Window Screens			
Natural Gas Lines				Pool Heater				Public Sewer System			

Item	Y	N	U	Additional Information
Central A/C				<input type="checkbox"/> electric <input type="checkbox"/> gas number of units: _____
Evaporative Coolers				number of units: _____
Wall/Window AC Units				number of units: _____
Attic Fan(s)				if yes, describe: _____
Central Heat				<input type="checkbox"/> electric <input type="checkbox"/> gas number of units: _____
Other Heat				if yes describe: _____
Oven				number of ovens: _____ <input type="checkbox"/> electric <input type="checkbox"/> gas <input type="checkbox"/> other: _____
Fireplace & Chimney				<input type="checkbox"/> wood <input type="checkbox"/> gas logs <input type="checkbox"/> mock <input type="checkbox"/> other: _____
Carport				<input type="checkbox"/> attached <input type="checkbox"/> not attached
Garage				<input type="checkbox"/> attached <input type="checkbox"/> not attached
Garage Door Openers				number of units: _____ number of remotes: _____
Satellite Dish & Controls				<input type="checkbox"/> owned <input type="checkbox"/> leased from _____
Security System				<input type="checkbox"/> owned <input type="checkbox"/> leased from _____
Water Heater				<input type="checkbox"/> electric <input type="checkbox"/> gas <input type="checkbox"/> other: _____ number of units: _____
Water Softener				<input type="checkbox"/> owned <input type="checkbox"/> leased from _____
Underground Lawn Sprinkler				<input type="checkbox"/> automatic <input type="checkbox"/> manual areas covered: _____
Septic / On-Site Sewer Facility				if yes, attach Information About On-Site Sewer Facility (TAR-1407)

Concerning the Property at _____

Water supply provided by: ☐ city ☐ well ☐ MUD ☐ co-op ☐ unknown ☐ other: _____

Was the Property built before 1978? ☐ yes ☐ no ☐ unknown

(If yes, complete, sign, and attach TAR-1906 concerning lead-based paint hazards).

Roof Type: _____ Age: _____ (approximate)

Is there an overlay roof covering on the Property (shingles or roof covering placed over existing shingles or roof covering)? ☐ yes ☐ no ☐ unknown

Are you (Seller) aware of any of the items listed in this Section 1 that are not in working condition, that have defects, or are need of repair? ☐ yes ☐ no If yes, describe (attach additional sheets if necessary): _____

Section 2. Are you (Seller) aware of any defects or malfunctions in any of the following?: (Mark Yes (Y) if you are aware and No (N) if you are not aware.)

Item	Y	N	Item	Y	N	Item	Y	N
Basement			Floors			Sidewalks		
Ceilings			Foundation / Slab(s)			Walls / Fences		
Doors			Interior Walls			Windows		
Driveways			Lighting Fixtures			Other Structural Components		
Electrical Systems			Plumbing Systems					
Exterior Walls			Roof					

If the answer to any of the items in Section 2 is yes, explain (attach additional sheets if necessary): _____

Section 3. Are you (Seller) aware of any of the following conditions: (Mark Yes (Y) if you are aware and No (N) if you are not aware.)

Condition	Y	N	Condition	Y	N
Aluminum Wiring			Previous Foundation Repairs		
Asbestos Components			Previous Roof Repairs		
Diseased Trees: <input type="checkbox"/> oak wilt <input type="checkbox"/>			Other Structural Repairs		
Endangered Species/Habitat on Property			Radon Gas		
Fault Lines			Settling		
Hazardous or Toxic Waste			Soil Movement		
Improper Drainage			Subsurface Structure or Pits		
Intermittent or Weather Springs			Underground Storage Tanks		
Landfill			Unplatted Easements		
Lead-Based Paint or Lead-Based Pt. Hazards			Unrecorded Easements		
Encroachments onto the Property			Urea-formaldehyde Insulation		
Improvements encroaching on others' property			Water Penetration		
Located in 100-year Floodplain			Wetlands on Property		
Located in Floodway			Wood Rot		
Present Flood Ins. Coverage (If yes, attach TAR-1414)			Active infestation of termites or other wood destroying insects (WDI)		
Previous Flooding into the Structures			Previous treatment for termites or WDI		
Previous Flooding onto the Property			Previous termite or WDI damage repaired		
Located in Historic District			Previous Fires		
Historic Property Designation			Termite or WDI damage needing repair		
Previous Use of Premises for Manufacture of Methamphetamine			Single Blockable Main Drain in Pool/Hot Tub/Spa*		

Concerning the Property at _____

If the answer to any of the items in Section 3 is yes, explain (attach additional sheets if necessary): _____

*A single blockable main drain may cause a suction entrapment hazard for an individual.

Section 4. Are you (Seller) aware of any item, equipment, or system in or on the Property that is in need of repair, which has not been previously disclosed in this notice? ☐ yes ☐ no If yes, explain (attach additional sheets if necessary): _____

Section 5. Are you (Seller) aware of any of the following (Mark Yes (Y) if you are aware. Mark No (N) if you are not aware.)

Y N

- ☐ ☐ Room additions, structural modifications, or other alterations or repairs made without necessary permits or not in compliance with building codes in effect at the time.
- ☐ ☐ Homeowners' associations or maintenance fees or assessments. If yes, complete the following:
Name of association: _____
Manager's name: _____ Phone: _____
Fees or assessments are: \$_____ per _____ and are: ☐ mandatory ☐ voluntary
Any unpaid fees or assessment for the Property? ☐ yes (\$_____) ☐ no
If the Property is in more than one association, provide information about the other associations below or attach information to this notice.
- ☐ ☐ Any common area (facilities such as pools, tennis courts, walkways, or other) co-owned in undivided interest with others. If yes, complete the following:
Any optional user fees for common facilities charged? ☐ yes ☐ no If yes, describe: _____
- ☐ ☐ Any notices of violations of deed restrictions or governmental ordinances affecting the condition or use of the Property.
- ☐ ☐ Any lawsuits or other legal proceedings directly or indirectly affecting the Property. (Includes, but is not limited to: divorce, foreclosure, heirship, bankruptcy, and taxes.)
- ☐ ☐ Any death on the Property except for those deaths caused by: natural causes, suicide, or accident unrelated to the condition of the Property.
- ☐ ☐ Any condition on the Property which materially affects the health or safety of an individual.
- ☐ ☐ Any repairs or treatments, other than routine maintenance, made to the Property to remediate environmental hazards such as asbestos, radon, lead-based paint, urea-formaldehyde, or mold.
If yes, attach any certificates or other documentation identifying the extent of the remediation (for example, certificate of mold remediation or other remediation).
- ☐ ☐ Any rainwater harvesting system located on the property that is larger than 500 gallons and that uses a public water supply as an auxiliary water source.
- ☐ ☐ The Property is located in a propane gas system service area owned by a propane distribution system retailer.

Concerning the Property at _____

If the answer to any of the items in Section 5 is yes, explain (attach additional sheets if necessary): _____

Section 6. Seller ☐ has ☐ has not attached a survey of the Property.

Section 7. Within the last 4 years, have you (Seller) received any written inspection reports from persons who regularly provide inspections and who are either licensed as inspectors or otherwise permitted by law to perform inspections? ☐ yes ☐ no If yes, attach copies and complete the following:

Inspection Date	Type	Name of Inspector	No. of Pages

Note: A buyer should not rely on the above-cited reports as a reflection of the current condition of the Property. A buyer should obtain inspections from inspectors chosen by the buyer.

Section 8. Check any tax exemption(s) which you (Seller) currently claim for the Property:

- | | | |
|--|---|---|
| <input type="checkbox"/> Homestead | <input type="checkbox"/> Senior Citizen | <input type="checkbox"/> Disabled |
| <input type="checkbox"/> Wildlife Management | <input type="checkbox"/> Agricultural | <input type="checkbox"/> Disabled Veteran |
| <input type="checkbox"/> Other: _____ | | <input type="checkbox"/> Unknown |

Section 9. Have you (Seller) ever filed a claim for damage to the Property with any insurance provider? ☐ yes ☐ no

Section 10. Have you (Seller) ever received proceeds for a claim for damage to the Property (for example, an insurance claim or a settlement or award in a legal proceeding) and not used the proceeds to make the repairs for which the claim was made? ☐ yes ☐ no If yes, explain: _____

Section 11. Does the property have working smoke detectors installed in accordance with the smoke detector requirements of Chapter 766 of the Health and Safety Code?* ☐ unknown ☐ no ☐ yes. If no or unknown, explain. (Attach additional sheets if necessary): _____

**Chapter 766 of the Health and Safety Code requires one-family or two-family dwellings to have working smoke detectors installed in accordance with the requirements of the building code in effect in the area in which the dwelling is located, including performance, location, and power source requirements. If you do not know the building code requirements in effect in your area, you may check unknown above or contact your local building official for more information.*

A buyer may require a seller to install smoke detectors for the hearing impaired if: (1) the buyer or a member of the buyer's family who will reside in the dwelling is hearing-impaired; (2) the buyer gives the seller written evidence of the hearing impairment from a licensed physician; and (3) within 10 days after the effective date, the buyer makes a written request for the seller to install smoke detectors for the hearing-impaired and specifies the locations for installation. The parties may agree who will bear the cost of installing the smoke detectors and which brand of smoke detectors to install.

Concerning the Property at _____

Seller acknowledges that the statements in this notice are true to the best of Seller's belief and that no person, including the broker(s), has instructed or influenced Seller to provide inaccurate information or to omit any material information.

_____ Signature of Seller	_____ Date	_____ Signature of Seller	_____ Date
_____ Printed Name:	_____ Printed Name:	_____ Printed Name:	_____ Printed Name:

ADDITIONAL NOTICES TO BUYER:

- (1) The Texas Department of Public Safety maintains a database that the public may search, at no cost, to determine if registered sex offenders are located in certain zip code areas. To search the database, visit www.txdps.state.tx.us. For information concerning past criminal activity in certain areas or neighborhoods, contact the local police department.
- (2) If the property is located in a coastal area that is seaward of the Gulf Intracoastal Waterway or within 1,000 feet of the mean high tide bordering the Gulf of Mexico, the property may be subject to the Open Beaches Act or the Dune Protection Act (Chapter 61 or 63, Natural Resources Code, respectively) and a beachfront construction certificate or dune protection permit may be required for repairs or improvements. Contact the local government with ordinance authority over construction adjacent to public beaches for more information.
- (3) If you are basing your offers on square footage, measurements, or boundaries, you should have those items independently measured to verify any reported information.
- (4) The following providers currently provide service to the property:

Electric:_____	phone #:_____
Sewer:_____	phone #:_____
Water:_____	phone #:_____
Cable:_____	phone #:_____
Trash:_____	phone #:_____
Natural Gas:_____	phone #:_____
Phone Company:_____	phone #:_____
Propane:_____	phone #:_____
- (5) This Seller's Disclosure Notice was completed by Seller as of the date signed. The brokers have relied on this notice as true and correct and have no reason to believe it to be false or inaccurate. **YOU ARE ENCOURAGED TO HAVE AN INSPECTOR OF YOUR CHOICE INSPECT THE PROPERTY.**

The undersigned Buyer acknowledges receipt of the foregoing notice.

_____ Signature of Buyer	_____ Date	_____ Signature of Buyer	_____ Date
_____ Printed Name:	_____ Printed Name:	_____ Printed Name:	_____ Printed Name:

Appendix – 3

Austin Board of Realtor's Seller's Disclosure Notice

(see change effective on April 15, 2014 to include GCDs on page 5, paragraph 7, last question)

Courtesy of the Austin Board of Realtors



**AUSTIN/CENTRAL TEXAS REALTY INFORMATION SERVICE (ACTRIS)
SELLER'S DISCLOSURE NOTICE**

THIS FORM IS FURNISHED BY THE AUSTIN/CENTRAL TEXAS REALTY INFORMATION SERVICE FOR USE BY ITS PARTICIPANTS
AND REPRESENTED SELLERS.

NOTE: EFFECTIVE JANUARY 1, 1994, SECTION 5.008 OF THE TEXAS PROPERTY CODE REQUIRES A SELLER OF RESIDENTIAL REAL PROPERTY OF NOT MORE THAN ONE DWELLING UNIT TO DELIVER A COPY OF THE SELLER'S DISCLOSURE NOTICE, COMPLETE TO THE BEST OF THE SELLER'S BELIEF AND KNOWLEDGE, TO A PURCHASER ON OR BEFORE THE EFFECTIVE DATE OF A CONTRACT FOR THE SALE OF THE PROPERTY. IF A CONTRACT IS ENTERED INTO WITHOUT THE SELLER PROVIDING THE NOTICE, THE BUYER MAY TERMINATE THE CONTRACT FOR ANY REASON WITHIN SEVEN (7) DAYS AFTER RECEIVING THE NOTICE. IF INFORMATION REQUIRED BY THE NOTICE IS UNKNOWN TO THE SELLER, THE SELLER MAY INDICATE THAT FACT ON THE NOTICE AND THEREBY COMPLY WITH THE REQUIREMENTS OF SECTION 5.008 OF THE TEXAS PROPERTY CODE. This form complies with and contains additional disclosures which exceed the minimum required by the Code.

CONCERNING THE PROPERTY AT _____
(Street Address and City)

THIS NOTICE IS A DISCLOSURE OF SELLER'S KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED BY SELLER AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PURCHASER MAY WISH TO OBTAIN. IT IS NOT A WARRANTY OF ANY KIND BY SELLER, SELLER'S AGENTS, OR ANY OTHER AGENT.

Seller ☐ is ☐ is not occupying the Property.
If unoccupied, how long since Seller has occupied the Property? _____
Seller ☐ is ☐ is not knowledgeable of the current condition of the Property.
The Property ☐ is ☐ is not currently leased and ☐ has ☐ has not been leased in the last two (2) years.
If leased, how long? _____
During the last year the Property ☐ has ☐ has not been vacant.
If yes, how long was the Property vacant? _____

1. FEATURES AND EQUIPMENT (Mark all appropriate items that **EXIST** and their **WORKING CONDITION**):

*NOTE: This notice does not establish which items will or will not be conveyed.
The terms of the Contract will determine which items will and will not be conveyed.*

Y = Yes, N = No, U = Unknown

Exists	Item	Working Condition			Additional Information			
<input type="checkbox"/>	Bathroom Heater	Y	N	U	#	[E]	[G]	
<input type="checkbox"/>	Cable TV Wiring	Y	N	U				
<input type="checkbox"/>	Carport	Y	N	U	# of Spaces	Attached	[Y]	[N]
<input type="checkbox"/>	Carbon Monoxide Detector	Y	N	U	#			
<input type="checkbox"/>	Central Air Conditioning	Y	N	U	#	[E]	[G]	
<input type="checkbox"/>	Central Heating	Y	N	U	#	[E]	[G]	[HP]
<input type="checkbox"/>	Central Vacuum	Y	N	U				
<input type="checkbox"/>	Chimney	Y	N	U				
<input type="checkbox"/>	Cook Top/Stove	Y	N	U	[E]	[G]	# of Burners	Other:
<input type="checkbox"/>	Deck	Y	N	U	Wood	[]	Other	[]
<input type="checkbox"/>	Dishwasher	Y	N	U				
<input type="checkbox"/>	Disposal	Y	N	U				
<input type="checkbox"/>	Dryer	Y	N	U	[E]	[G]	[110V]	[220V]
<input type="checkbox"/>	Dryer Hookups	Y	N	U	[110V]	[220V]	[G]	
<input type="checkbox"/>	Emergency Escape Ladder(s)	Y	N	U				
<input type="checkbox"/>	Evaporative Cooler	Y	N	U	#			
<input type="checkbox"/>	Fans	Y	N	U	Ceiling #	Attic #	Exhaust #	Whole House #

Features and Equipment Continues Next Page

Initialed for Identification by Seller _____ and Buyer _____

Page 1 of 8

Seller's Disclosure Notice Concerning Property At: _____

Exists	Item	Working Condition			Additional Information
	Fencing	Y	N	U	Full <input type="checkbox"/> Partial <input type="checkbox"/> Type:
	Fire Alarm/Detector	Y	N	U	#
	Fireplace	Y	N	U	#
	Fireplace Logs	Y	N	U	#
	French Drain	Y	N	U	
	Garage	Y	N	U	Attached: <input type="checkbox"/> <input type="checkbox"/> # Spaces
	Garage Door Opener	Y	N	U	#
	Garage Remote Control(s)	Y	N	U	#
	Gas Lighting Fixtures	Y	N	U	#
	Gas Lines	Y	N	U	[NAT] [LP]
	Gazebo	Y	N	U	
	Grinder Pump	Y	N	U	
	Ice Machine	Y	N	U	
	Intercom System	Y	N	U	
	Lawn Sprinkler System	Y	N	U	Full <input type="checkbox"/> Partial <input type="checkbox"/> Automatic <input type="checkbox"/> Manual <input type="checkbox"/>
	Liquid Propane Gas	Y	N	U	LP Community (Captive) <input type="checkbox"/> LP on Property <input type="checkbox"/>
	Microwave	Y	N	U	
	Mock Fireplace	Y	N	U	With Chimney <input type="checkbox"/> Without Chimney <input type="checkbox"/>
	Outdoor Grill	Y	N	U	[NAT] [LP] [E]
	Oven	Y	N	U	[E] [G]
	Patio	Y	N	U	Covered <input type="checkbox"/> Uncovered <input type="checkbox"/>
	Plumbing System	Y	N	U	
	Pool	Y	N	U	Inground <input type="checkbox"/> Above Ground <input type="checkbox"/> Other <input type="checkbox"/>
	Pool Accessories	Y	N	U	
	Pool Heater	Y	N	U	
	Pool Maintenance Equip.	Y	N	U	
	Portable Storage Buildings	Y	N	U	#
	Public Sewer System	Y	N	U	
	Rain Gutters	Y	N	U	Full <input type="checkbox"/> Partial <input type="checkbox"/>
	Range	Y	N	U	[E] [G]
	Refrigerator	Y	N	U	#
	Roof Attic Vents	Y	N	U	
	Satellite Dish System	Y	N	U	Owned <input type="checkbox"/> Leased <input type="checkbox"/>
	Sauna	Y	N	U	#
	Security System	Y	N	U	Owned <input type="checkbox"/> Leased <input type="checkbox"/> Mo. Lease \$
	Septic System/Tank	Y	N	U	Date Last Pumped:
	Smoke Detector(s)	Y	N	U	# Hearing Impaired <input type="checkbox"/> <input type="checkbox"/>
	Spa/Hot Tub	Y	N	U	#
	Spa Heater	Y	N	U	# [E] [G] [Solar]
	Space Heater	Y	N	U	# [E] [G]
	Speakers	Y	N	U	
	Specialty Wiring	Y	N	U	Audio <input type="checkbox"/> Data <input type="checkbox"/> Speakers <input type="checkbox"/> Visual <input type="checkbox"/>
	Sump Pump	Y	N	U	#
	Trash Compactor	Y	N	U	#
	TV Antenna	Y	N	U	#
	Wall/Window A/C	Y	N	U	#
	Washer	Y	N	U	
	Washer Hookups	Y	N	U	
	Water Heater	Y	N	U	# [E] [G] [Solar]
	Water Softener	Y	N	U	Owned <input type="checkbox"/> Leased <input type="checkbox"/> Mo. Lease/Service Chg \$
	Window Screens	Y	N	U	# Type:
	Other:	Y	N	U	
	Other:	Y	N	U	

Initialed for Identification by Seller _____, _____ and Buyer _____, _____

Page 2 of 8

Seller's Disclosure Notice Concerning Property At: _____

Explain all No [N] or Unknown [U] answers. Attach additional sheets as necessary. _____

The seller excludes the following items from the sale: _____

2. UTILITY PROVIDERS and HOMEOWNERS' ASSOCIATION (Fill in names of Suppliers with Telephone Numbers):

WATER Supply: _____ Ph: _____ GAS Supply: _____ Ph: _____
☐ City ☐ Well ☐ Private ☐ MUD ☐ Utility ☐ Tank ☐ Bottle ☐ Co-Op
☐ WCID ☐ Co-Op ☐ Other _____ Tank/Bottle Mo. Lease \$ _____

WASTEWATER: _____ Ph: _____ HOA/CONDO ASSOC: _____
☐ City ☐ Co-Op ☐ MUD ☐ Other ☐ Mandatory ☐ Voluntary
☐ Septic Association Fee \$ _____ per _____

ELECTRICITY: _____ Ph: _____ HOA's Administrative Transfer Fee of \$ _____
CABLE TV: _____ Ph: _____ (Fee(s) above shall include all costs of transfer of ownership)
SOLID WASTE PROVIDER: _____ Ph: _____ Manager's Name: _____
Manager's Telephone: _____

3. PROPERTY DEFECTS/MALFUNCTIONS:

Are you (Seller) aware of any known defects/malfunctions in any of the following? Mark Yes [Y] if you are aware and mark No [N] if you are not aware.

Exists	Item	Defect/ Malfunction		Exists	Item	Defect/ Malfunction	
	Basement	Y	N		Potable Drinking Water	Y	N
	Ceilings	Y	N		Retaining Wall(s)	Y	N
	Driveway(s)	Y	N		Roof	Y	N
	Electrical System(s)	Y	N		Overlay Shingles: [Y] [N]		
	Exterior Doors	Y	N		Roof Approximate Age: Yrs		
	Exterior Walls	Y	N		Roof Type:		
	Floors	Y	N		Septic System: Type:	Y	N
	Foundation: Slab [] Pier & Beam []	Y	N		Sidewalks	Y	N
	Interior Doors	Y	N		Stucco	Y	N
	Interior Walls	Y	N		Conventional [] Synthetic [] Type:		
	Lighting Fixtures	Y	N		Underground Electrical Lines	Y	N
	Outbuildings	Y	N		Wastewater System	Y	N
	Plumbing	Y	N		Windows	Y	N

If the answer to any of the above in #3 is Yes [Y], explain. Attach additional sheets as necessary.

Describe any other Property Defects/Malfunctions:

Initialed for Identification by Seller _____ and Buyer _____

Page 3 of 8

Seller's Disclosure Notice Concerning Property At: _____

4. CURRENT CONDITIONS OF THE PROPERTY:

Are you (SELLER) aware of any of the following? Mark Yes [Y] if you are aware, mark No [N] if you are not aware.

Active Termites	Y	N	Fault Lines	Y	N
Wood-Destroying Insects	Y	N	Landfill	Y	N
Termite or Wood Rot Needing Repair	Y	N	Subsurface Structure(s)	Y	N
Termite Damage	Y	N	Pit(s)	Y	N
Termite Treatment	Y	N	Underground Spring(s)	Y	N
Water Penetration of Structure	Y	N	Intermittent/Weather Spring(s)	Y	N
Structural or Roof Repair	Y	N	Underground Storage Tank(s)	Y	N
Asbestos Components	Y	N	Endangered Species/Habitat on Property	Y	N
Urea Formaldehyde Insulation	Y	N	Hazardous or Toxic Waste	Y	N
Radon Gas	Y	N	Diseased Trees	Y	N
Lead-Based Paint	Y	N	Fence Lines Not Corresponding to Property Boundaries	Y	N
Aluminum Wiring	Y	N	Wetlands on Property	Y	N
Foundation Repair	Y	N	Unplatted Easement(s)	Y	N
Flooding of Land	Y	N	Underground Electrical Line(s)	Y	N
Improper Drainage or Ponding	Y	N	Dampness in Crawl Spaces	Y	N
Located in 100-Year Flood Plain	Y	N	Water Heater Leak(s)	Y	N
Present Flood Insurance Coverage	Y*	N	HVAC System Leak(s) – Overflow Pan or Other Defect	Y	N
*Attach TAR Form 1414 if answer is Yes					
Settling or Soil Movement	Y	N	Single Blockable Main Drain in Pool/Hot Tub/Spa*	Y	N
			Other Conditions	Y	N

If the answer to any of the above is Yes [Y], explain. Attach additional sheets _____

* A single blockable main drain may cause a suction entrapment hazard for an individual.

5. PREVIOUS CONDITIONS OF THE PROPERTY:

Are you (SELLER) aware of the following previously defective conditions? Mark Yes [Y] if you are aware, mark No [N] if you are not aware.

Previous Flooding into the Structure	Y	N
Previous Flooding onto the Property	Y	N
Previous Fires	Y	N
Previous Foundation Repairs	Y	N
Previous Roof Repairs	Y	N
Previous Treatment for Termites or Wood-Destroying Insects	Y	N
Previous Termite or Wood-Destroying Insect Damage Repaired	Y	N
Previous Use of Premises for Manufacture of Methamphetamine	Y	N

Other Conditions: _____

If the answer to any of the above is Yes [Y], explain. Attach additional sheets as necessary.

6. SYSTEMS IN NEED OF REPAIR:

Are you (SELLER) aware of any item, equipment, or system in or on the Property that is in need of repair, which has not been previously disclosed in this Notice? YES ☐ NO ☐

If Yes, explain. Attach additional sheets as necessary.

Initialed for Identification by Seller _____, _____ and Buyer _____, _____
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Page 4 of 8

Seller's Disclosure Notice Concerning Property At: _____

7. MISCELLANEOUS CONDITIONS:

Are you (SELLER) aware of any of the following? Mark Yes [Y] if you are aware, mark No [N] if you are not aware.

- [Y] [N] Room additions, structural modifications, or other alterations or repairs made without necessary permits or not in compliance with building code in effect at the time of construction?
- [Y] [N] Any "common area" facilities, i.e., pools, tennis courts, walkways, or other areas, co-owned in undivided interest with others?
- [Y] [N] Are there any optional charges or user fees for "common area" facilities? If yes, describe: _____
- [Y] [N] Any notices of violations of deed restrictions or governmental ordinances, zoning, use, or impervious cover limitations affecting the condition or use of the Property?
- [Y] [N] Any lawsuits or other legal proceedings directly affecting the Property or Seller's ability to convey property, e.g., bankruptcy, probate, guardianship, etc.?
- [Y] [N] Any condition of the Property which materially affects the physical health or safety of an individual?
- [Y] [N] Features of the Property shared in common with adjoining landowners, e.g., walls, fences, and driveways, whose use of responsibility for maintenance may have an effect on the Property?
- [Y] [N] Any encroachments of improvements on the subject Property onto another property or of improvements on another property onto the subject Property, easements, (recorded or unrecorded), or similar matters that may affect your interest in the Property?
- [Y] [N] Landfill – compacted or otherwise – on the Property or any portion thereof?
- [Y] [N] Any settling from any cause or slippage, sliding or other soil problems?
- [Y] [N] Damage to the Property or any of the structures from fire, earthquake, floods or landslides?
- [Y] [N] Any future highway, freeway, or air traffic patterns which affects the Property?
- [Y] [N] Any future annexation plans which affect the Property?
- [Y] [N] Within the previous 12 months, has there been an equity loan on the Property?
If Yes, date ____/____/____
- [Y] [N] Any pending flood plain changes known?
- [Y] [N] Any ordinances that restrict flood coverage or rebuilding any portion of the structure to its previous use?
- [Y] [N] Previous FEMA claim paid?
- [Y] [N] Death on the Property other than death caused by: natural causes, suicide, or accident unrelated to the Property's condition?
- [Y] [N] Was the dwelling built before 1978? Unknown []
- [Y] [N] Any repairs or treatment, other than routine maintenance, made to the Property to eliminate environmental hazards such as asbestos, radon, lead-based paint, urea formaldehyde, or mold?
- [Y] [N] Any historic preservation restriction or ordinance or archeological designation associated with the Property?
- [Y] [N] Any IRS or tax redemption periods which will affect the sale of the Property?
- [Y] [N] Any rainwater harvesting system connected to the property's public water supply?
- [Y] [N] Any portion of the property in a groundwater conservation district as defined by Texas Water Code, Chapter 36? *Please see tceq.texas.gov. Go to Water. Click on Groundwater Planning and Assessment, then Groundwater Conservation Districts and look for the Map of Texas GCDs.*

Initialed for Identification by Seller _____, _____ and Buyer _____, _____
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Page 5 of 8

Change includes Groundwater
Conservation Districts

Seller's Disclosure Notice Concerning Property At: _____

8. AD VALOREM TAXES:

Check any Tax Exemption(s) which you (SELLER) currently claim for the Property:

☐ Homestead ☐ Over 65 ☐ Disabled ☐ Disabled Veteran ☐ Wildlife Management
☐ Agricultural ☐ Unknown ☐ None ☐ Other _____

Have you or a third party on your behalf ever supplied information regarding property defects or condition at the Appraisal District? ☐ Yes ☐ No

Have you ever testified or had an agent testify on your behalf in a valuation hearing at an Appraisal District Value Protest Hearing? ☐ Yes ☐ No If so, which Appraisal District? _____

Is property located in a Statutory Tax District? ☐ Yes ☐ No

9. INSPECTIONS AND DISCLOSURES:

Have you (SELLER) received any written inspection reports from persons who regularly provide inspections and who are either licensed as inspectors or engineers or otherwise permitted by law to perform inspections in the past four (4) years? ☐ Yes ☐ No

Chapter 6-7 of the Austin City Code requires an energy audit be completed for certain properties before the time of sale. Has an energy audit been completed on the Property within the last 10 years? ☐ Yes ☐ No ☐ N/A

If Yes to either of these questions, list the information below and attach copies of the reports:

<u>Date of Inspection</u>	<u>Name of Document</u>	<u>Author of Report</u>	<u>Number of Pages</u>
_____	_____	_____	_____
_____	_____	_____	_____

Is a previous Seller's Disclosure available? ☐ Yes ☐ No If so, please attach.

Is a current Survey available? ☐ Yes ☐ No If so, please attach. Date of Current Survey: ____/____/____

If yes, attach survey with notarized T-47 Affidavit.

SMOKE DETECTORS:

Does the property have working smoke detectors installed in accordance with the smoke detector requirements of Chapter 766 of the Health and Safety Code?* ☐ Yes ☐ No ☐ Unknown If no or unknown, explain. (Attach additional sheets if necessary): _____

*Chapter 766 of the Health and Safety Code requires one-family or two-family dwellings to have working smoke detectors installed in accordance with the requirements of the building code in effect in the area in which the dwelling is located, including performance, location, and power source requirements. If you do not know the building code requirements in effect in your area, you may check "unknown" above or contact your local building official for more information.

A buyer may require a seller to install smoke detectors for the hearing-impaired if: (1) the buyer or a member of the buyer's family who will reside in the dwelling is hearing-impaired; (2) the buyer gives the seller written evidence of the hearing impairment from a licensed physician; and (3) within 10 days after the effective date, the buyer makes a written request for the seller to install smoke detectors for the hearing-impaired and specifies the locations for installation. The parties may agree who will bear the cost of installing the smoke detectors and which brand of smoke detectors to install.

11. MAJOR REPAIRS OR IMPROVEMENTS MADE:

Have you (SELLER) made, or had made, major repairs or improvements (costing \$500 or more) to the Property during the time you have owned the Property? ☐ Yes ☐ No

Are you (SELLER) aware of major repairs or improvements made by previous owners?

☐ Yes ☐ No

If Yes to either, please explain. (Attach additional sheet(s) as necessary.) _____

Initialed for Identification by Seller _____, _____ and Buyer _____, _____

Page 6 of 8

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Seller's Disclosure Notice Concerning Property At: _____

12. INSURANCE CLAIMS:

In the last 5 years have you (SELLER) filed an insurance claim related to this property? ☐ Yes ☐ No
If there was a monetary settlement, were the funds used to make the repair? ☐ Yes ☐ No

13. GOVERNMENT OR OTHER PENDING OR RECEIVED NOTICES:

SELLER has not received any notices, either oral or written, regarding the need for repair or replacement or any portion of the Property from any governmental agency, appraiser, inspector, mortgage lender, repair service or others, except:

SELLER has not received any notices from any governmental agency or private company of pending condemnation or any portion of the Property, except:

14. ADDITIONAL DISCLOSURE FORMS ATTACHED: ☐ Yes ☐ No

- ☐ Addendum for Seller's Disclosure of Information on Lead-Based Paint (TAR 1906)
- ☐ Environmental Assessment, Threatened or Endangered Species, and Wetlands Addendum (TAR 1917)
- ☐ Energy Audit
- ☐ Information About On-Site Sewer Facility (TAR 1407)
- ☐ §49.452 Notice to Purchase (TREC OP-C) ☐ Yes ☐ No
- ☐ Information About Special Flood Hazard Areas (TAR 1414)
- ☐ Relocation Addendum (TAR 1941)
- ☐ Other _____

THE ABOVE DISCLOSURES ARE TRUE AND CORRECT TO THE BEST KNOWLEDGE OF THE SELLER(S). SELLER acknowledges that the statements in this Disclosure are true to the best of the Seller's belief and that no person, including the Broker(s) and their Agent(s) has instructed or influenced Seller to provide inaccurate information or to omit any material information.

Seller's Signature

Printed Name

Date

Seller's Signature

Printed Name

Date

Initialed for identification by Buyer _____, _____ Page 7 of 8

Seller's Disclosure Notice Concerning Property At: _____

**THE UNDERSIGNED BUYER HEREBY ACKNOWLEDGES
RECEIPT OF A COPY OF THIS STATEMENT.**

NOTICES TO BUYER:

LISTING BROKER, _____, AND OTHER BROKER,

**_____, ADVISE YOU THAT THE SELLER'S
DISCLOSURE NOTICE WAS COMPLETED BY SELLER, AS OF THE DATE SIGNED.**

**THE LISTING BROKER AND THE OTHER BROKER HAVE RELIED ON THIS NOTICE AS TRUE AND CORRECT
AND HAVE NO REASON TO BELIEVE IT TO BE FALSE OR INACCURATE.**

**THE TEXAS DEPARTMENT OF PUBLIC SAFETY MAINTAINS A DATABASE THAT CONSUMERS MAY SEARCH,
AT NO COST, TO DETERMINE IF REGISTERED SEX OFFENDERS ARE LOCATED IN CERTAIN ZIP CODE AREAS.
TO SEARCH THE DATABASE, VISIT WWW.TXDPS.STATE.TX.US. FOR INFORMATION CONCERNING PAST
CRIMINAL ACTIVITY IN CERTAIN AREAS OR NEIGHBORHOODS, CONTACT THE LOCAL POLICE
DEPARTMENT.**

**IF THE PROPERTY IS LOCATED IN A COASTAL AREA THAT IS SEWARD OF THE GULF INTRACOASTAL
WATERWAY OR WITHIN 1,000 FEET OF THE MEAN HIGH TIDE BORDERING THE GULF OF MEXICO, THE
PROPERTY MAY BE SUBJECT TO THE OPEN BEACHES ACT OR THE DUNE PROTECTION ACT (CHAPTER 61 OR
63, NATURAL RESOURCES CODE, RESPECTIVELY) AND A BEACHFRONT CONSTRUCTION CERTIFICATE OR
DUNE PROTECTION PERMIT MAY BE REQUIRED FOR REPAIRS OR IMPROVEMENTS. CONTACT THE LOCAL
GOVERNMENT WITH ORDINANCE AUTHORITY OVER CONSTRUCTION ADJACENT TO PUBLIC BEACHES FOR
MORE INFORMATION.**

**YOU ARE STRONGLY ADVISED TO HAVE AN INSPECTOR OF YOUR CHOICE INSPECT THE PROPERTY PRIOR
TO CLOSING. ALL INSPECTION REPORTS FURNISHED BY THE SELLER ARE PROVIDED FOR INFORMATION
PURPOSES ONLY AND ARE NOT INTENDED TO BE A SUBSTITUTE FOR AN INSPECTION PERFORMED BY AN
INSPECTOR OF BUYER'S CHOICE.**

**BUYER ACKNOWLEDGES THAT THEY HAVE BEEN STRONGLY ADVISED TO HAVE THE PROPERTY
INSPECTED BY THEIR OWN INDEPENDENT INSPECTOR(S).**

**THE DISCLOSURE NOTICE CONTAINS NO ESTIMATE OF THE NUMBER OF SQUARE FEET OF SPACE WITHIN
THE RESIDENCE AND BROKERS MAKE NO REPRESENTATIONS REGARDING SUCH AREA. IF SQUARE
FOOTAGE IS IMPORTANT TO BUYER, BUYER SHOULD HAVE IT MEASURED BY A PROFESSIONAL.**

THE UNDERSIGNED BUYER ACKNOWLEDGES RECEIPT OF THE FOREGOING NOTICE

Buyer's Signature

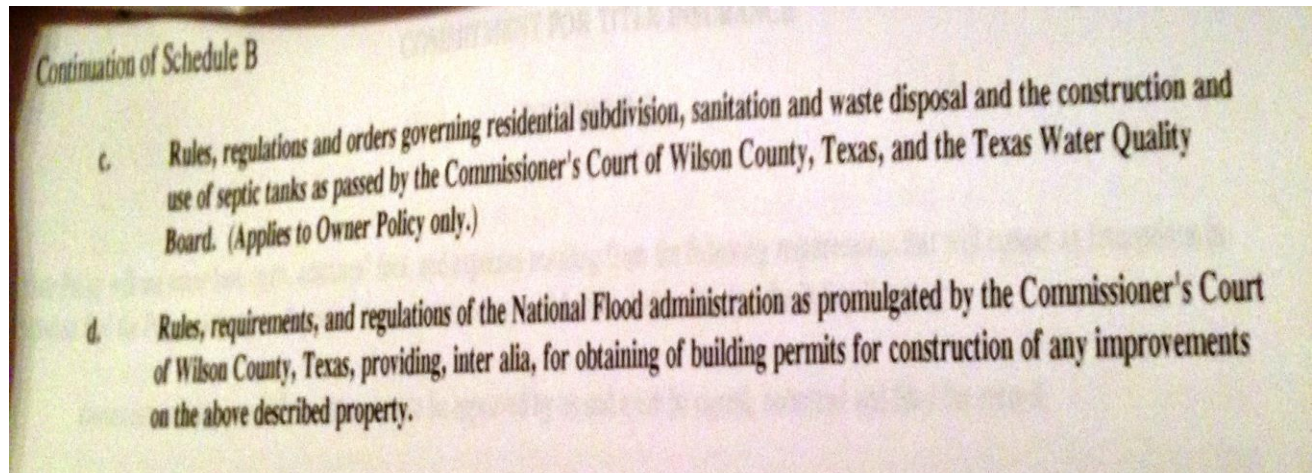
Buyer's Signature

Date

Date

Appendix 4

Sample Wording on Schedule B Commitment for Title Insurance



Appendix – 5

Proposed Change to the Texas Property Code 5.008

___ B. Number _____

By: _____

A BILL TO BE ENTITLED
AN ACT

relating to requiring groundwater districts to record their boundaries and for purchasers to receive notice thereof.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Property Code, Section 5.008(b) is amended as follows:

(b) The notice must be executed and must, at a minimum, read substantially similar to the following:

SELLER'S DISCLOSURE NOTICE
CONCERNING THE PROPERTY
AT _____

(Street Address and City)

THIS NOTICE IS A DISCLOSURE OF SELLER'S
KNOWLEDGE OF THE CONDITION OF THE PROPERTY
AS OF THE DATE SIGNED BY SELLER AND IS NOT A
SUBSTITUTE FOR ANY INSPECTIONS OR
WARRANTIES THE PURCHASER MAY WISH TO
OBTAIN. IT IS NOT A WARRANTY OF ANY KIND BY
SELLER OR SELLER'S AGENTS.

Seller ___ is ___ is not occupying the Property.
If unoccupied, how long since Seller has occupied the Property?

1. The Property has the items checked below:
Write Yes (Y), No (N), or Unknown (U).

___ Range	___ Oven	___ Microwave
___ Dishwasher	___ Trash Compactor	___ Disposal
___ Washer/Dryer	___ Window	___ Rain Gutters
___ Hookups	___ Screens	
___ Security System	___ Fire Detection Equipment	___ Intercom System
	___ Smoke Detector	
	___ Smoke Detector--	
	___ Hearing Impaired	
	___ Carbon Monoxide Alarm	
	___ Emergency Escape Ladder(s)	

___ TV Antenna	___ Cable TV Wiring	___ Satellite Dish
___ Ceiling Fan(s)	___ Attic Fan(s)	___ Exhaust Fan(s)
___ Central A/C	___ Central Heating	___ Wall/Window Air Conditioning
___ Plumbing System	___ Septic System	___ Public Sewer System
___ Patio/Decking	___ Outdoor Grill	___ Fences
___ Pool	___ Sauna	___ Spa
		___ Hot Tub
___ Pool Equipment	___ Pool Heater	___ Automatic Lawn Sprinkler System
___ Fireplace(s) & Chimney (Woodburning)		___ Fireplace(s) & Chimney (Mock)
___ Natural Gas Lines		___ Gas Fixtures
___ Liquid Propane Gas:	___ LP Community (Captive)	___ LP on Property
Garage: ___ Attached	___ Not Attached	___ Carport
Garage Door Opener(s):	___ Electronic	___ Control(s)
Water Heater:	___ Gas	___ Electric
Water Supply: ___ City	___ Well ___ MUD	___ Co-op
Roof Type: _____ Age: _____ (approx)		

Are you (Seller) aware of any of the above items that are not in working condition, that have known defects, or that are in need of repair? ___ Yes ___ No ___ Unknown.

If yes, then describe. (Attach additional sheets if necessary):

2. Does the property have working smoke detectors installed in accordance with the smoke detector requirements of Chapter 766, Health and Safety Code?* ___ Yes ___ No ___ Unknown.

If the answer to the question above is no or unknown, explain. (Attach additional sheets if necessary):

*Chapter 766 of the Health and Safety Code requires one- family or two-family dwellings to have working smoke detectors installed in accordance with the requirements of the building code in effect in the area in which the dwelling is located, including performance, location, and power source requirements. If you do not know the building code requirements in effect in your area, you may check unknown above or contact your local building official for more information. A buyer may require a seller to install smoke detectors for the hearing impaired if: (1) the buyer or a member of the buyer's family who will reside in the dwelling is hearing impaired; (2) the buyer gives the seller written evidence of the hearing impairment from a licensed physician; and (3) within 10 days after the effective date, the buyer makes a written request for the seller to install

smoke detectors for the hearing impaired and specifies the locations for installation. The parties may agree who will bear the cost of installing the smoke detectors and which brand of smoke detectors to install.

3. Are you (Seller) aware of any known defects/malfunctions in any of the following?

Write Yes (Y) if you are aware, write No (N) if you are not aware.

<input type="checkbox"/> Interior Walls	<input type="checkbox"/> Ceilings	<input type="checkbox"/> Floors
<input type="checkbox"/> Exterior Walls	<input type="checkbox"/> Doors	<input type="checkbox"/> Windows
<input type="checkbox"/> Roof	<input type="checkbox"/> Foundation/ Slab(s)	<input type="checkbox"/> Basement
<input type="checkbox"/> Walls/Fences	<input type="checkbox"/> Driveways	<input type="checkbox"/> Sidewalks
<input type="checkbox"/> Plumbing/Sewers/ Septics	<input type="checkbox"/> Electrical Systems	<input type="checkbox"/> Lighting Fixtures

☐ Other Structural Components

(Describe): _____

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

4. Are you (Seller) aware of any of the following conditions?

Write Yes (Y) if you are aware, write No (N) if you are not aware.

<input type="checkbox"/> Active Termites (includes wood-destroying insects)	<input type="checkbox"/> Previous Structural or Roof Repair
<input type="checkbox"/> Termite or Wood Rot Damage Needing Repair	<input type="checkbox"/> Hazardous or Toxic Waste
<input type="checkbox"/> Previous Termite Damage	<input type="checkbox"/> Asbestos Components
<input type="checkbox"/> Previous Termite Treatment	<input type="checkbox"/> Urea formaldehyde Insulation
<input type="checkbox"/> Previous Flooding	<input type="checkbox"/> Radon Gas
<input type="checkbox"/> Improper Drainage	<input type="checkbox"/> Lead Based Paint
<input type="checkbox"/> Water Penetration	<input type="checkbox"/> Aluminum Wiring
<input type="checkbox"/> Located in 100-Year Floodplain	<input type="checkbox"/> Previous Fires
<input type="checkbox"/> Present Flood Insurance Coverage	<input type="checkbox"/> Unplatted Easements
<input type="checkbox"/> Landfill, Settling, Soil Movement, Fault Lines	<input type="checkbox"/> Subsurface Structure or Pits
<input type="checkbox"/> Single Blockable Main Drain in Pool/Hot Tub/Spa*	<input type="checkbox"/> Previous Use of Premises for Manufacture of Methamphetamine

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

*A single blockable main drain may cause a suction entrapment hazard for an individual.

5. Are you (Seller) aware of any item, equipment, or system in or on the property that is in need of repair? ____ Yes (if you are aware) ____ No (if you are not aware). If yes, explain (attach additional sheets as necessary). _____

6. Are you (Seller) aware of any of the following?

Write Yes (Y) if you aware, write No (N) if you are not aware.

- ____ Room additions, structural modifications, or other alterations or repairs made without necessary permits or not in compliance with building codes in effect at that time.
- ____ Homeowners' Association or maintenance fees or assessments.
- ____ Any "common area" (facilities such as pools, tennis courts, walkways, or other areas) co-owned in undivided interest with others.
- ____ Any notices of violations of deed restrictions or governmental ordinances affecting the condition or use of the Property.
- ____ Any lawsuits directly or indirectly affecting the Property.
- ____ Any condition on the Property which materially affects the physical health or safety of an individual.
- ____ Any rainwater harvesting system located on the property that is larger than 500 gallons and that uses a public water supply as an auxiliary water source.
- ____ Any portion of the Property in a Groundwater Conservation District or other district which has authority to regulate groundwater under Chapter 36 of the Texas Water Code?

Proposed
Revision

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

7. If the property is located in a coastal area that is seaward of the Gulf Intracoastal Waterway or within 1,000 feet of the mean high tide bordering the Gulf of Mexico, the property may be subject to the Open Beaches Act or the Dune Protection Act (Chapter 61 or 63, Natural Resources Code, respectively) and a beachfront construction certificate or dune protection permit may be required for repairs or improvements. Contact the local government with ordinance authority over construction adjacent to public beaches for more information.

Date

Signature of Seller

The undersigned purchaser hereby acknowledges receipt of the foregoing notice.

Date

Signature of Purchaser

Section 4. This Act takes effect September 1, 2015.