

Date: June 28, 2012

To: All Texas Agents

From: Chris Phillips, President & CEO

RE: New HOA Addendum, TREC No. 36-7
Mandatory use beginning July 1, 2012

The revised Addendum for Property Subject to Mandatory Membership in a Property Owner's Association (Form 36-7) is generating a lot of interest within the real estate industry. The primary differences between the new Addendum 36-7 and the prior HOA Addendum 36-6 include:

- A new subparagraph A.2 was added to allow the option for the buyer to obtain, pay for and deliver a copy of the subdivision information, which includes a resale certificate, to the Seller. If buyer obtains this information within the time required, buyer may terminate the contract within 3 days or prior to closing, whichever occurs first.
- The buyer's right to terminate once buyer is in receipt of the subdivision information has been changed from 7 days to 3 days.
- The title company may order the subdivision information ONLY upon receipt of the required fee from the party obligated to pay under the contract.
- Subparagraph C was modified to clarify that charges for the subdivision information (resale certificate) and any deposits for reserves do not fall within the scope of this subparagraph, which primarily addresses the transfer fee.
- A new subparagraph E was added to authorize the title company to order information from the HOA if necessary, such as the status of dues, special assessments, violations of covenants and restrictions and waivers of any right of first refusal, for situations in which the buyer and the seller have not required a resale certificate. There are two small boxes within new subparagraph E, one of which should be checked, whenever box A.4 of the Addendum is checked or the buyer has not required an update under box A.3, to reflect whether the buyer or the seller has agreed to make prior payment to the title company for the cost of obtaining the information.

Note (1): Section 5.012(g) of the Texas Property Code, as revised during the last legislative session, provides that a buyer has responsibility for paying for the resale certificate unless the contract provides otherwise:

(g) The purchaser shall pay the fee to the property owners' association or its agent for issuing the resale certificate unless otherwise agreed by the purchaser and seller of the property. The property owners' association may require payment before beginning the process of providing a resale certificate requested under Chapter 207 but may not process a payment for a resale certificate until the certificate is available for delivery. The association may not charge a fee if the certificate is not provided in the time prescribed by Section 207.003(a).

Note (2): The statutory changes made during the last legislative session changed the number of days for the HOA or management company to deliver the subdivision information and/or an update from calendar days to business days (i.e. ten (10) business days to deliver resale certificate and seven (7) business days for updates). The revised Addendum did not track the statutory revision from calendar days to business days. The Addendum still speaks in terms of calendar days. As a result, when the Addendum is completed using calendar days, it has the unintended consequence of shortening the period for the HOA/management company to deliver the resale certificate from that mandated under the statute and the HOA will likely charge expedited service fees.

Note (3): If the buyer is the party responsible for paying for the resale certificate under the contract, the title company has always had the ability to deduct the cost of the resale certificate from the earnest money on a cancelled transaction per paragraph 18 of the TREC 1-to-4 family residential contract.

Note (4): The new statutory revisions in the Property Code interchange the terms "subdivision information" and "resale certificate". The term "subdivision information" includes the resale certificate, but also includes copies of restrictions and the by-laws and regulations of the subdivision.