



Leasing and Property Management
Committee Meeting
2019 Texas REALTORS® Conference

Friday, September 13, 2019
8:30 a.m. – 9:00 a.m.
Room 201A
Fort Worth Convention Center
Fort Worth, Texas

Leasing and Property Management Committee Meeting

Friday, September 13, 2019
8:30 – 9:00 a.m.
Room 201 A
Fort Worth Convention Center
Fort Worth, Texas

- | | |
|--------------------------------------|--------------------------------|
| I. Call to Order | Marty Hutchison, Chair |
| II. Minutes | Marty Hutchison, Chair |
| III. Legislative & Regulatory Update | Lee Warren, Liaison |
| a. TREC Update | |
| b. New Legislation | Kelly Flanagan, Staff Attorney |
| c. Proposed Disparate Impact Rule | Abby Lee, Staff Attorney |
| d. Credit Card/Debit Card Surcharge | Abby Lee, Staff Attorney |
| IV. Forms Update | Danny Hardeman, Vice Chair |
| V. Education Update | Danny Hardeman, Vice Chair |
| VI. Unfinished Business | Marty Hutchison, Chair |
| VII. New Business | Marty Hutchison, Chair |
| VIII. Adjourn | Marty Hutchison, Chair |

Meeting Minutes
Leasing and Property Management Committee
Regular meeting – February 9, 2019
Austin, TX
Minutes recorded by: Abby Lee

Chair Marty Hutchison called the meeting to order at 8:46 a.m. Roll was called and a quorum was later established.

Vice-Chair Danny Hardeman reported on the activities of the Property Management Education Subcommittee, and the property management webinar series.

As part of the legislative and regulatory update, Liaison Lee Warren updated the committee on recently-adopted changes to the TREC rules. Legislative Attorney Kelly Flanagan provided the committee with an update of the 2019 legislative session.

Legislative Attorney Kelly Flanagan gave a case law update on two relevant cases involving fees for late rental payments and short-term rental bans.

Chair Hutchison asked for any corrections to the meeting minutes from either the February 2018 or the September 2018 meeting. The minutes were approved as distributed.

There was no unfinished business.

Chair Hutchison reminded the committee about the upcoming REALTOR® Day at the Capitol and encouraged attendees to attend and participate in a group photo on the Capitol grounds.

There was no other new business.

The meeting was adjourned at 9:27 a.m.

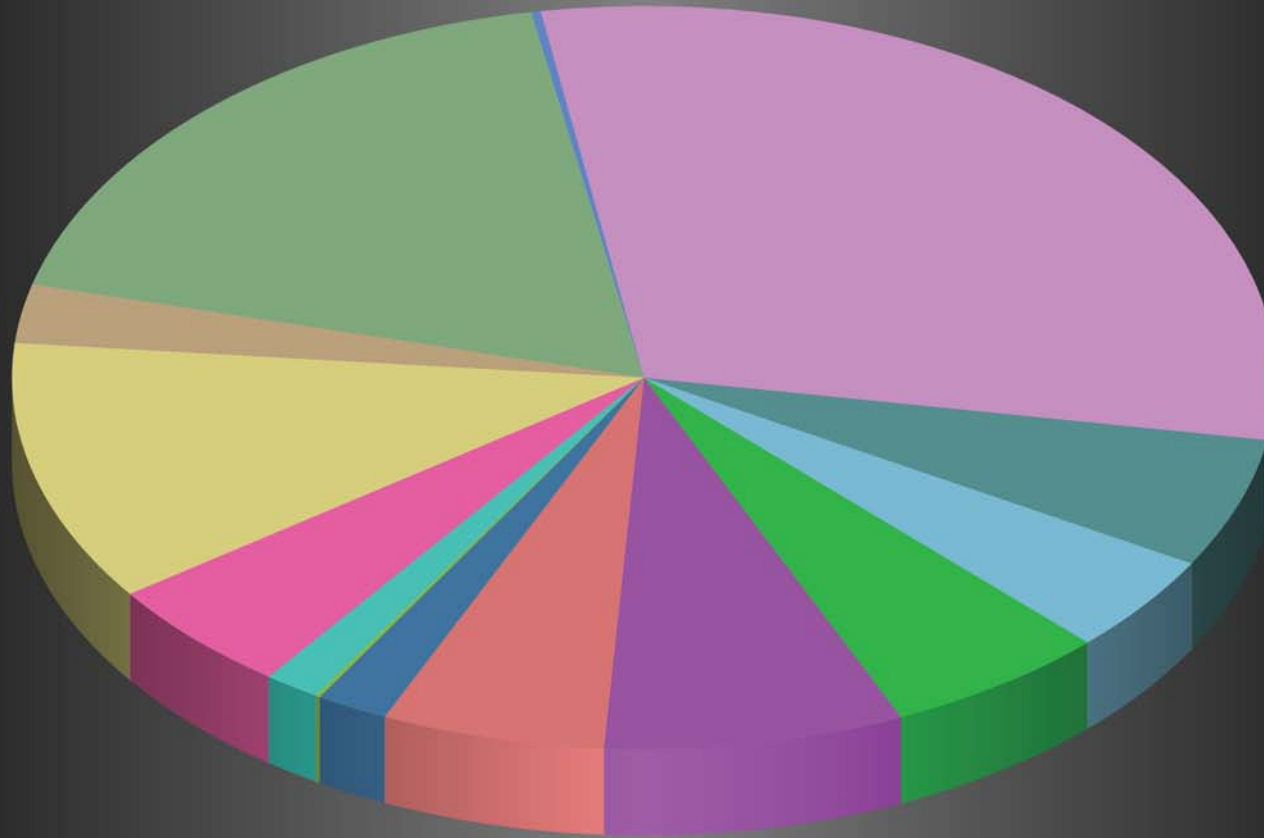
Roll:

Member		
1	Aaron Schooley	
2	Adona Lowery	x
3	Al Jurado	x
4	Angela Gonzales	
5	Ann Green	
6	Bart Sturzl	x
7	Bill Evans	
8	Bryan Johnson	x
9	Carla Henry	
10	Christine Savoie	x
11	Cindy Hoover	x
12	Cortney Gill	x
13	Danny Hardeman	x
14	Dorothy Wanko	x
15	E. Lee Warren	x
16	Eddie Davis	
17	Elias Camhi	x
18	Gary Lingenfelter	x
19	J.C. Posey	x
20	Jack Cannon	
21	Jim Smith	x
22	Jolie Smith	
23	Joseph DeBlasio	x
24	Katherine Scott	

25	Krishna Upadhyaya	x
26	Linda Holzer	
27	Malisa Spivey	
28	Marty Hutchison	x
29	Michael Mengden	x
30	Nathan Bell	x
31	Patsy Oakley	x
32	Paul French	
33	Pete Neubig	
34	Randi Reams	
35	Richard Elias	x
36	Rick Ebert	x
37	Robert Boot	x
38	Ronnah Stabenow	x
39	Sergio Molina	
40	Shannon Ferry-Moser	
41	Steven Wright	x
42	Tammy Kister	x
43	Tony Sims	x
44	Vanessa Dirks	x
45	Warren Ivey	x
46	Wojciech Kic	x

Complaint Subject Categories for June 2018 through June 2019

1680 Total Allegations



Administrative 4.29 % (72)	Leasing/Property Management - Misappropriation 5.00 % (84)
Advertising 5.71 % (96)	Leasing/Property Management - Other 11.37 % (191)
Breach of Fiduciary Duties 7.68 % (129)	License Holder Acting as Principal 2.56 % (43)
Broker Supervision 5.71 % (96)	Licensure Issues 18.10 % (304)
Failure to Disclose 1.85 % (31)	Sales Misappropriation 0.24 % (4)
Improper Contract/Seller Disclosure form usage 0.12 % (2)	Sales Other 30.30 % (509)
Intermediary/IABS 1.43 % (24)	Unlicensed Activity 5.65 % (95)

Complaint Subject Categories by Month															
Subject Matter Categories	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Total	YTD
Administrative <i>Bad check, contact information, uncooperative, etc.</i>	8	5	13	9	2	3	4	3	10	5	3	2	5	72	4.29%
Advertising <i>Includes misleading & dba</i>	3	10	7	7	9	14	4	5	5	11	5	8	8	96	5.71%
Breach of Fiduciary Duty <i>Including false promise</i>	3	8	12	3	12	7	3	23	5	3	1	39	10	129	7.68%
Broker Supervision	4	10	8	3	12	7	3	21	4	4	10	5	5	96	5.71%
Failure to Disclose	5	2	0	2	2	1	1	3	2	4	4	0	5	31	1.85%
Improper contract/Seller Disclosure form usage <i>Including false promise</i>	0	2	0	0	0	0	0	0	0	0	0	0	0	2	0.12%
Intermediary/IABS	1	2	1	2	4	7	1	1	0	0	1	1	3	24	1.43%
Leasing/Property Management - Misappropriation	0	0	0	2	12	4	2	1	4	0	12	38	9	84	5.00%
Leasing/Property Management - Other <i>Includes negligence, referral, etc.</i>	10	11	9	9	19	9	7	24	12	14	6	45	16	191	11.37%
License Holder Acting as Principal	3	6	3	0	7	3	3	3	2	2	2	3	6	43	2.56%
Licensure Issues <i>Criminal background check, denials, probationary license, etc.</i>	30	20	24	17	22	32	15	20	24	30	25	25	20	304	18.10%
Sales Misappropriation <i>Other than Leasing/Property Management - Misappropriation</i>	1	0	0	0	2	1	0	0	0	0	0	0	0	4	0.24%
Sales Other <i>Includes negligence, rebate, referral, earnest money, etc. (other than Leasing/Property Management - Other)</i>	42	67	45	35	35	31	27	28	37	36	48	37	41	509	30.30%
Unlicensed Activity	2	3	0	5	6	9	1	23	3	1	12	25	5	95	5.65%
Total	112	146	122	94	144	128	71	155	108	110	129	228	133	1680	



Agenda Item 17:

Discussion and possible action to adopt amendments to 22 TAC §531.3, Competency

Summary:

The proposed amendments to 22 TAC §531.3 were published in the May 24, 2019, issue of the *Texas Register* (44 TexReg 2566).

The amendments clarify the definition of competency to conform with recent changes to §535.2, Broker Responsibility, which requires brokers to ensure their sponsored agents have geographic and property type competence.

Comments:

No comments were received.

Staff Recommendation:

Authorize staff, on behalf of the Commission, to submit for adoption, amendments to 22 TAC §531.3, Competency, as published, to the *Texas Register*, along with any technical or non-substantive changes required for adoption.

Motion:

MOVE, that the Commission approve staff's recommendation.

MOVE, that the Commission approve staff's recommendation with the following changes:

_____.

MOVE, that the Commission not approve staff's recommendation.



AGENDA ITEM 17
ADOPTED RULE ACTION FROM THE AUGUST 12, 2019, MEETING OF THE COMMISSION
CHAPTER 531 CANONS OF PROFESSIONAL ETHICS AND CONDUCT
§531.3. Competency

§531.3 Competency. It is the obligation of a license holder ~~[real estate agent]~~ to be knowledgeable and competent as a real estate brokerage practitioner. The license holder must ~~[-agent should]~~:

(1) be informed on local market issues and conditions affecting ~~[the]~~ real estate in the geographic area where a license holder provides services to a client ~~[business and pledged to continuing education in the intricacies involved in marketing real estate for others;;]~~

(2) be informed on national, state, and local issues and developments in the real estate industry; ~~[and]~~

(3) exercise judgment and skill in the performance of brokerage activities ~~[the work]~~; and

(4) be educated in the characteristics involved in the specific type of real estate being brokered for others.



Agenda Item 22:

Discussion and possible action to adopt amendments to 22 TAC §535.148, Receiving an Undisclosed Commission or Rebate

Summary:

The proposed amendments to 22 TAC §535.148 were published in the May 24, 2019, issue of the *Texas Register* (44 TexReg 2577).

The amendments provide clarity about consumer protection issues when paying or receiving funds to/from other settlement service providers.

Comments:

Two comments were received on the amendments as published. Each comment addressed the need for change to current practices and neither requested changes to the proposed rule. As such, staff recommends not making any changes.

Staff Recommendation:

Authorize staff, on behalf of the Commission, to submit for adoption, amendments to 22 TAC §535.148, Receiving an Undisclosed Commission or Rebate, as published, to the *Texas Register*, along with any technical or non-substantive changes required for adoption.

Motion:

MOVE, that the Commission approve staff's recommendation.

MOVE, that the Commission approve staff's recommendation with the following changes:

_____.

MOVE, that the Commission not approve staff's recommendation.



AGENDA ITEM 22
ADOPTED RULE ACTION FROM THE AUGUST 12, 2019, MEETING OF THE COMMISSION
CHAPTER 535 GENERAL PROVISIONS
Subchapter N. Suspension and Revocation of Licensure
§535.148. Receiving an Undisclosed Commission or Rebate

§535.148. Receiving an Undisclosed Commission or Rebate.

(a) A license holder may not receive a commission, rebate, or fee in a transaction from a person other than the person the license holder represents without first disclosing to the license holder's client that the license holder intends to receive the commission, rebate or fee, and obtaining the consent of the license holder's client. ~~[This subsection does not apply to referral fees paid by one licensed real estate broker or sales agent to another active licensed broker or sales agent.]~~

(b) - (c) (No change.)

(d) ~~A license holder may not pay or receive a fee or other valuable consideration to or from any other settlement service provider for, but not limited to, the following: [A license holder may not accept a fee or payment for services provided for or on behalf of a service provider to a real estate transaction the payment of which is contingent upon a party to the real estate transaction purchasing a contract or services from the service provider].~~

(1) the referral of inspections, lenders, mortgage brokers, or title companies;

(2) inclusion on a list of inspectors, preferred settlement providers, or similar arrangements; or

(3) inclusion on lists of inspectors or other settlement providers contingent on other financial agreements.

(e) In this section, "settlement service" means a service provided in connection with a prospective or actual settlement, and "settlement service provider" includes, but is not limited to, any one or more of the following:

(1) a federally related mortgage loan originator;

(2) a mortgage broker;

(3) a lender or other person who provides any service related to the origination, processing or funding of a real estate loan;

(4) a title service provider;

(5) an attorney;

(6) a person who prepares documents, including notarization, delivery, and recordation;

(7) a person who provides credit report services;

(8) an appraiser;

(9) an inspector;

(10) a settlement agent;

(11) a person who provides mortgage insurance services;

(12) a person who provides services involving hazard, flood, or other casualty insurance, homeowner's warranties or residential service contracts;

(13) a real estate agent or broker; and

(14) a person who provides any other services for which a settlement service provider requires a borrower or seller to pay.

~~(f)~~ (e) A license holder must use TREC No. RSC-2, Disclosure of Relationship with Residential Service Company, to disclose to a party to a real estate transaction in which the license holder represents one or both of the parties any payments received for services provided for or on behalf of a residential service company licensed under Texas Occupations Code Chapter 1303.

~~(g)~~ (f) The Texas Real Estate Commission adopts by reference TREC No. RSC-2, Disclosure of Relationship with Residential Service Company,

approved by the Commission for use by license holders to disclose payments received from a residential service company. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(h) This section does not prohibit:

(1) normal promotional or educational activity that is not conditioned on the referral of business and that does not involve the defraying of expenses that otherwise would be incurred;

(2) a payment at market rates to any person for goods actually furnished or for services actually performed; or

(3) a payment pursuant to a cooperative brokerage or referral arrangement or agreement between active licensed real estate agents and real estate brokers.



Agenda Item 30:

Discussion and possible action to implement legislative changes enacted in SB 624 and fee changes related to the FY2020 budget and propose amendments and repeal to 22 TAC:

- a. §535.101, Fees;
- b. §535.210, Fees; and
- c. §534.2, Processing Fees for Dishonored Payments (REPEAL)

Summary:

Version A of the amendments to §535.101 and §535.210 eliminate fees to license holders to implement statutory changes enacted by the 86th Legislature in SB 624 as part of the Sunset Review process and the Sunset Advisory Commission's management directives to limit fund growth and provide straightforward fee setting. The amendments also add provisions to address the process for follow-up payment after a dishonored payment, which is currently addressed in a rule proposed for repeal, and the ability of the Commission to place a license on inactive status if payment is not received.

Version B of these amendments additionally eliminates the fee to establish or change a relationship with a sponsoring broker in §535.101 and the fee for changing a license holder's name or to establish a relationship with a sponsoring professional inspector in §535.210.

The language in §534.2 proposed for repeal is also proposed to be added to §535.101 and §535.210 related to fees, with modifications, for purposes of simplification.

Staff Recommendation:

Authorize staff, on behalf of the Commission, to submit Version B of the proposed amendments to 22 TAC §535.101, Fees, §535.210, Fees and proposed repeal of §534.2, Processing Fees for Dishonored Payments, as presented, along with any technical or non-substantive changes required for proposal, to the *Texas Register*, for publication and public comment.

Motion:

MOVE, that the Commission approve staff's recommendation.

MOVE, that the Commission approve staff's recommendation with the following changes:

_____.

MOVE, that the Commission not approve staff's recommendation.



AGENDA ITEM 30A
PROPOSED RULE ACTION FROM THE AUGUST 12, 2109, MEETING OF THE COMMISSION
CHAPTER 535 GENERAL PROVISIONS
Subchapter J. Fees
§535.101. Fees
VERSION B

§535.101. Fees.

(a) The Commission shall charge and collect the following fees:

(1) a fee of \$150 for filing an original or reinstatement application for a real estate broker license, which includes a fee for transcript evaluation;

(2) a fee of \$72 for the timely renewal of a real estate broker license;

(3) a fee of \$120 for filing an application to step down from a real estate broker license to a real estate sales agent license;

(4) a fee of \$150 for filing an original or reinstatement application for a real estate sales agent license, which includes a fee for transcript evaluation;

(5) a fee of \$66 for the timely renewal of a real estate sales agent license;

(6) a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a license within 90 days of expiration;

(7) a fee equal to 2 times the timely renewal fee for the late renewal of a license more than 90 days but less than six months after expiration;

~~[(8) a fee of \$50 for filing a request for, or renewal of, a license for each additional office or place of business for a period of two years;]~~

(8)~~[(9)]~~ the fee charged by an examination provider pursuant to a contract with the Commission for taking a license examination;

(9)~~[(10)]~~ a fee of \$10 for deposit into the real estate recovery trust account upon the filing of an original sales agent or broker application;

~~[(11) a fee of \$10 to establish or change a relationship with a sponsoring broker;]~~

~~[(12) a fee of \$20 for filing a request for a license certificate due to a change of place of business or a change of a license holder name;]~~

~~[(A) A change of address or name submitted with an application to renew a license, however, does not require payment of a fee in addition to the fee for renewing the license.]~~

~~[(B) The Commission may require written proof of a license holder's right to use a different name before issuing a license certificate reflecting a change of name.]~~

(10)~~[(13)]~~ a fee of \$50 to request an inactive broker license be returned to active status;

~~[(14) a fee of \$40 for preparing a certificate of active licensure or sponsorship;]~~

(11)~~[(15)]~~ a fee of \$50 for filing a fitness ~~[moral character]~~ determination;

(12)~~[(16)]~~ a fee of \$400 for filing an application for accreditation of a qualifying education program for a period of four years;

(13)~~[(17)]~~ after initial approval of accreditation, a renewal fee of \$200 a year for operation of a qualifying real estate education program;

(14)~~[(18)]~~ a fee of \$50 plus the following fees per classroom hour approved by the Commission for each qualifying education course for a period of four years:

(A) \$10 for content and examination review;

(B) \$10 for classroom delivery design and presentation review; and

(C) \$20 for distance education delivery design and presentation review;

~~15[(19)]~~ a fee of \$400 for filing an application for accreditation as a Continuing Education provider for a period of two years;

~~16[(20)]~~ a fee of \$50 plus the following fees per classroom hour approved by the Commission for each continuing education course for a period of two years:

(A) \$5 for content and examination review;

(B) \$5 for classroom delivery design and presentation review; and

(C) \$10 for distance education delivery design and presentation review;

~~(17)[(21)]~~ the fee required under paragraphs ~~(14)(C)[(18)(C)]~~ and ~~(16)(C)[(20)(C)]~~ will be waived if the course has already been certified by a distance learning certification center acceptable to the Commission;

~~[(22) a fee of \$150 for filing an application for approval as an instructor for a two-year period for real estate qualifying or continuing education courses;]~~

~~(18)[(23)]~~ the fee charged by the Federal Bureau of Investigation and Texas Department of Public Safety for fingerprinting or other service for a national or state criminal history check in connection with a license application ~~[or renewal];~~

~~(19)[(24)]~~ the fee required by the Department of Information Resources as a subscription or convenience fee for use of an online payment system;

~~(20)[(25)]~~ a continuing education deferral fee of \$200; and

~~(21)[(26)]~~ a late reporting fee of \$250 to reactivate a license under §535.93 of this title.~~;~~

~~[(27) a fee of \$30 for processing a check or other equivalent instrument returned by a bank or depository as dishonored or reversed;]~~

~~[(28) a fee of \$20 for filing any application, renewal, change request, or other record on paper that a person may otherwise file with the Commission electronically by accessing the Commission's website, entering the required information online, and paying the appropriate fee; and]~~

~~[(29) a fee of \$20 per certification when providing certified copies of documents.]~~

(b) – (c) (No change.)

(d) If a payment to the Commission by or on behalf of a license holder or applicant is dishonored or reversed by a bank or other financial institution, the Commission shall send a request for payment of the dishonored or reversed payment by certified mail to the last known mailing address of the license holder or applicant as shown in the records of the Commission. If the Commission has sent a request for payment in accordance with the provisions of this section, and the license holder or applicant fails to make good on the payment in the form of a cashier's check, money order, or credit card payment within 30 days after the Commission has mailed the request, the license will be placed on inactive status.

(e) Placing a license on inactive status under this section does not preclude the Commission from proceeding under Texas Occupations Code, §1101.652(a)(3), against a license holder who has failed to make good a payment issued to the Commission within a reasonable time.

What did TREC do?

May 09, 2019 | Texas REALTORS® Staff



The May 6 Texas Real Estate Commission meeting covered 47 agenda items. [See the full agenda and materials here](#), and read below for highlights relevant to your business.

Competency

One proposal to amend [TREC rule §531.3](#) would make clear that license holders must be knowledgeable about local market issues in the geographic area in which they work and the characteristics involved in the specific type of property being sold or leased. Per TREC: “The proposed amendments clarify the definition of competency to conform with recent changes to [§535.2](#), Broker Responsibility, which requires brokers to ensure their sponsored agents have geographic and property-type competence.”

Instructor Approval

As a result of a recommendation by the Sunset Advisory Commission, the Texas Legislature is considering passage of a bill that would eliminate TREC’s authority to approve instructors. Accordingly, the commission proposed amendments to the rules to reflect this change. TREC will still determine qualifications that an instructor of a TREC-approved course must meet, but the instructor will be approved by the education provider. In terms of those instructor qualifications, TREC has proposed eliminating the

8-hour adult education instructor training course required within four years of an application to teach qualifying or non-elective continuing education courses.

Payments Between Settlement Service Providers

The proposed amendments to §535.148 would provide clarity about federal law prohibiting the paying or receiving of funds to other settlement service providers defined by RESPA. TREC currently has a rule that includes these provisions for inspectors, but not explicitly for other real estate license holders.

All the proposed rule changes will be posted in an upcoming Texas Register, after which the public will have 30 days to comment. Once published in the register, you can send comments to general.counsel@trec.texas.gov.

Consumer Complaints

The commission adopted a new rule that places the process for consumer complaints in one place: §535.142. This action does not change how consumer complaints are handled. It makes it easier to access that information.

Actions from TREC's August Meeting

August 15, 2019 | Texas REALTORS® Staff



The August 12 Texas Real Estate Commission meeting covered 45 agenda items spread over 472 pages of meeting materials. [See the full agenda and materials at TREC's website](#), and read below for highlights relevant to your business.

Adopted Rules

Eliminated consideration of student loan default: Emergency amendments were adopted to §535.91, Renewal of a Real Estate License, which removed references to student loan default. This change was due to Senate Bill 37, passed by the 86th Texas Legislature and signed by the governor removes consideration of a student loan default as grounds to deny a license or license renewal.

Added geographic and property-type competency: TREC rule §531.3 was amended to make clear that license holders must be knowledgeable about local market issues in the geographic area in which they work and the characteristics involved in the specific type of property being sold or leased. Penalties for violating this requirement were added to §535.191, with a range of \$500-3,000.

Education providers now approve instructors: The Texas Legislature removed TREC's authority to approve instructors. Therefore, the commission adopted amendments to the rules to reflect this change. TREC will still determine qualifications

that an instructor of a TREC-approved course must meet, but the instructor will be approved by the education provider. These amendments affect §535.63, §535.65, §535.74, and §535.75. The commission also eliminated the 8-hour adult education instructor training course required within four years of an application to teach qualifying or non-elective continuing education courses.

Undisclosed commission or rebate updates: TREC rule §535.148, Receiving an Undisclosed Commission or Rebate, was amended to conform with the federal Real Estate Settlement and Procedures Act (RESPA) and a similar provision in the rules applying to inspectors.

Proposed Rules Changes

Here are some of the changes proposed August 12, many of which were necessitated by action during the 2019 legislative session. [Download the meeting materials to see all the proposals](#), which will be discussed again at the November TREC meeting.

- **§535.112, Branch Office:** As a result of Senate Bill 624, a branch office license is no longer required as of September 1, 2019. Therefore, proposed changes were made to TREC rules to remove references to a branch office license. [For more information about this change, you can visit TREC's website.](#)
- **§535.101, Fees:** The proposed amendments eliminate fees for a branch office license, establishing or changing a relationship with a sponsoring broker, change of address or name, an active license certificate, instructor approval, submitting paper application or forms, and certified copies. The fee for dishonored checks is also removed; however, the proposed rule would create a process for requesting payment and allowing the commission to place a license on inactive status if payment isn't received.
- **§535.51, General Requirements for a Real Estate License:** The Texas Legislature removed the residency requirement for real estate license eligibility. The proposed amendment removes that requirement from the rule and removes references to service members to incorporate them in a new section, §535.58, License for Military Service Members, Veterans, or Military Spouses.

All the proposed rule changes will be posted in an upcoming Texas Register, after which the public will have 30 days to comment. Once published in the register, you can send comments to general.counsel@trec.texas.gov.

Proposed Forms Changes

The commission proposed changes to its contract forms.

Language was added to Paragraph 4 to address leases to which the seller is a party and requires the seller to acknowledge that the buyer has received a copy of all leases or will receive a copy within three days after the effective date. The buyer may terminate the contract after receipt of the leases within a period of days set in the contract.

Paragraph 4 also prohibits the seller from executing any new lease or amending any lease without buyer's written consent after the effective date of the contract. The language of existing Paragraph 4 was moved to the end of Paragraph 8.

Language was deleted from the Broker Information page of all contracts except the Farm and Ranch Contract: "Listing Broker has agreed to pay Other Broker ____ of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay Other Broker from Listing Broker's fee at closing."

These proposed changes affect the following forms. [Click here to see redlines](#):

- *Unimproved Property Contract*
- *One to Four Family Residential Contract (Resale)*
- *New Home Contract (Incomplete Construction)*
- *New Home Contract (Completed Construction)*
- *Farm and Ranch Contract*
- *Residential Condominium Contract (Resale)*

Changes were proposed to the *Addendum for Property Subject to Mandatory Membership in a Property Owners Association*. It was amended to add deposits and reserves to the list of payments the buyer will make in association with the transfer of the property. [See the redline](#).

Changes were proposed to the *Third Party Financing Addendum*. It was amended to clarify that the three-day notice requirement in Paragraph 2B does not apply to Paragraph 4. [See the redline](#).

Changes were proposed to the *Addendum for Authorizing Hydrostatic Testing*. It was amended to include a reference to the scope of hydrostatic testing in the top sentence. [See the redline](#).

You can send comments on the proposed form changes to general.counsel@trec.texas.gov. The earliest the form changes could be adopted is November.

Oldmixon to Retire

After 10 years leading the Texas Real Estate Commission, Executive Director Douglas Oldmixon announced his retirement. During Oldmixon's tenure at the commission, the agency improved broker responsibility, raised education standards, modernized rules, enhanced consumer protections, and improved its service to license holders. Texas REALTORS® thanks the executive director for his leadership.

How Changes in the Law Affect Your Business



Introductions

- Lori Levy, General Counsel
- Daniel Gonzalez, Director of Legislative Affairs
- Kelly Flanagan, Legislative Counsel
- Abby Lee, Senior Associate Counsel
- David Jones, Associate Counsel

2019 Regular Session Recap

- 7,851 bills filed, and 1,506 bills passed (19%).
- Main themes:
 - Property Tax Reform and Transparency (SB 2)
 - School Finance Reform (HB 3)
- TREC Sunset
- Of note, generally:
 - Municipal annexation
 - Declared disasters

What Changes in the Law Mean for You

- Licensing
- General Business Operations
- Sales Transactions
- Leasing & Property Management
- Guns on Property

Licensing

- HB 1342
- SB 1217
- SB 37
- SB 1200
- SB 1995

Licensing

HB 1342

Relating to the consequences of a criminal conviction on a person's eligibility for an occupational license.

SB 1217

Relating to the consideration of certain arrests in determining an applicant's eligibility for an occupational license.

Licensing

SB 37

Relating to a prohibition on the use of student loan default or breach of a student loan repayment or scholarship contract as a ground for refusal to grant or renew an occupational license or other disciplinary action in relation to an occupational license.

Licensing

SB 1200

Relating to the authority of certain military spouses to engage in a business or occupation in this state.

Licensing

SB 1995

Relating to the review of certain occupational licensing rules by the office of the governor.

General Business Operations

- HB 3609
- SB 1258
- SB 2342
- HB 101

General Business Operations

HB 3609

Relating to the filing of an assumed name certificate by certain business entities.

General Business Operations

SB 1258

Relating to the prosecution of limited liability companies and other business entities under the Penal Code.

General Business Operations

SB 2342

Relating to the jurisdiction of, and practices and procedures in civil cases before, justice courts, county courts, statutory county courts, and district courts.

General Business Operations

HB 101

Relating to the creation of the criminal offense of false caller identification information display.

Sales Transactions

- HB 1743
- HB 3815/SB 339
- SB 442

Sales Transactions

HB 1743

Relating to the additional ad valorem tax and interest as a result of a change of use of certain land *(e., rollback taxes)*.

Sales Transactions

HB 3815 / SB 339

Relating to a seller's disclosure notice for residential property regarding floodplains, flood pools, floodways, or reservoirs.

Sales Transactions

SB 442

Relating to a disclosure regarding flood coverage under a commercial or residential property insurance policy.

Leasing & Property Management

- HB 69
- HB 1002
- SB 234
- SB 1414
- HB 1152
- HB 4390

Leasing & Property Management

HB 69

Relating to the right to vacate and avoid liability under a residential lease after a tenant's death.

Leasing & Property Management

HB 1002

Relating to the term of a parking permit issued to a residential tenant by a landlord.

Leasing & Property Management

SB 234

Relating to the right to vacate and avoid residential lease liability following the occurrence of family violence.

Leasing & Property Management

SB 14 14

Relating to fees regarding a residential tenant's failure to timely pay rent.

Leasing & Property Management

HB 1152

Relating to the deceptive trade practice of charging exorbitant or excessive prices for necessities during a declared disaster.

Leasing & Property Management

HB 4390

Relating to the privacy of personal identifying information.

Guns on Property

- HB 121
- HB 302
- SB 741
- SB 772

Guns on Property

HB 121

Relating to a defense to prosecution for the offense of trespass by certain persons carrying handguns.

Guns on Property

HB 302

Relating to the carrying, storage, or possession of a firearm or firearm ammunition by certain persons on certain residential or commercial property.

Guns on Property

SB 741

Relating to restrictive covenants regarding firearms or firearm ammunition.

Guns on Property

SB 772

Relating to evidence in certain civil actions of a person's failure to forbid handguns on certain property.

What Changes in the Law Mean for Your Business



Questions?



AN ACT

relating to the right to vacate and avoid liability under a residential lease after a tenant's death.

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

SECTION 1. Subchapter A, Chapter 92, Property Code, is amended by adding Section 92.0162 to read as follows:

Sec. 92.0162. RIGHT TO VACATE AND AVOID LIABILITY FOLLOWING TENANT'S DEATH. (a) A representative of the estate of a tenant who dies before the expiration of the tenant's lease and was, at the time of the tenant's death, the sole occupant of a rental dwelling may terminate the tenant's rights and obligations under the lease and may vacate the leased premises and avoid liability for future rent and any other sums due under the lease for terminating the lease and vacating the leased premises before the end of the lease term if:

(1) the representative provides to the landlord or the landlord's agent written notice of the termination of the lease under this section;

(2) the deceased tenant's property is removed from the leased premises in accordance with Section 92.014(c) or (d); and

(3) the representative signs an inventory of the removed property, if required by the landlord or the landlord's agent.

(b) Termination of a lease under this section is effective

1 on the later of:

2 (1) the 30th day after the date on which the notice
3 under Subsection (a) was provided; or

4 (2) the date on which all of the conditions in
5 Subsection (a) have been met.

6 (c) After receipt of the notice provided under Subsection
7 (a), the landlord shall provide a copy of the written lease
8 agreement to the person who provided the notice on written request
9 of that person.

10 (d) This section does not affect the obligations or
11 liability of the tenant or the tenant's estate under the lease
12 before the lease is terminated under this section, including the
13 liability of the tenant or the tenant's estate for:

14 (1) delinquent, unpaid rent; and

15 (2) damages to the leased premises not caused by
16 normal wear and tear.

17 (e) A landlord or landlord's agent who lawfully permits a
18 person described by Subsection (a) to enter or facilitates the
19 person's entry into the leased premises under this section is not
20 liable for an act or omission that arises in connection with
21 permitting or facilitating the entry.

22 SECTION 2. Section 92.0162, Property Code, as added by this
23 Act, applies only to a lease agreement entered into on or after the
24 effective date of this Act. A lease agreement entered into before
25 the effective date of this Act is governed by the law in effect at
26 the time the lease agreement was entered into, and the former law is
27 continued in effect for that purpose.

1 SECTION 3. This Act takes effect January 1, 2020.

President of the Senate

Speaker of the House

I certify that H.B. No. 69 was passed by the House on April 25, 2019, by the following vote: Yeas 116, Nays 12, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 69 was passed by the Senate on May 22, 2019, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to the carrying, storage, or possession of a firearm or
firearm ammunition by certain persons on certain residential or
commercial property.

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

SECTION 1. Section 30.05, Penal Code, is amended by adding
Subsections (f-1), (f-2), and (f-3) to read as follows:

(f-1) It is a defense to prosecution under this section
that:

(1) the basis on which entry on the property was
forbidden is that entry with a firearm or firearm ammunition was
forbidden;

(2) the actor is:

(A) an owner of an apartment in a condominium
regime governed by Chapter 81, Property Code;

(B) an owner of a condominium unit governed by
Chapter 82, Property Code;

(C) a tenant or guest of an owner described by
Paragraph (A) or (B); or

(D) a guest of a tenant of an owner described by
Paragraph (A) or (B);

(3) the actor:

(A) carries or stores a firearm or firearm
ammunition in the condominium apartment or unit owner's apartment

or unit;

(B) carries a firearm or firearm ammunition directly en route to or from the condominium apartment or unit owner's apartment or unit;

(C) carries a firearm or firearm ammunition directly en route to or from the actor's vehicle located in a parking area provided for residents or guests of the condominium property; or

(D) carries or stores a firearm or firearm ammunition in the actor's vehicle located in a parking area provided for residents or guests of the condominium property; and

(4) the actor is not otherwise prohibited by law from possessing a firearm or firearm ammunition.

(f-2) It is a defense to prosecution under this section that:

(1) the basis on which entry on a leased premises governed by Chapter 92, Property Code, was forbidden is that entry with a firearm or firearm ammunition was forbidden;

(2) the actor is a tenant of the leased premises or the tenant's guest;

(3) the actor:

(A) carries or stores a firearm or firearm ammunition in the tenant's rental unit;

(B) carries a firearm or firearm ammunition directly en route to or from the tenant's rental unit;

(C) carries a firearm or firearm ammunition directly en route to or from the actor's vehicle located in a

1 parking area provided for tenants or guests by the landlord of the
2 leased premises; or

3 (D) carries or stores a firearm or firearm
4 ammunition in the actor's vehicle located in a parking area
5 provided for tenants or guests by the landlord of the leased
6 premises; and

7 (4) the actor is not otherwise prohibited by law from
8 possessing a firearm or firearm ammunition.

9 (f-3) It is a defense to prosecution under this section
10 that:

11 (1) the basis on which entry on a leased premises
12 governed by Chapter 94, Property Code, was forbidden is that entry
13 with a firearm or firearm ammunition was forbidden;

14 (2) the actor is a tenant of a manufactured home lot or
15 the tenant's guest;

16 (3) the actor:

17 (A) carries or stores a firearm or firearm
18 ammunition in the tenant's manufactured home;

19 (B) carries a firearm or firearm ammunition
20 directly en route to or from the tenant's manufactured home;

21 (C) carries a firearm or firearm ammunition
22 directly en route to or from the actor's vehicle located in a
23 parking area provided for tenants or tenants' guests by the
24 landlord of the leased premises; or

25 (D) carries or stores a firearm or firearm
26 ammunition in the actor's vehicle located in a parking area
27 provided for tenants or tenants' guests by the landlord of the

1 leased premises; and

2 (4) the actor is not otherwise prohibited by law from
3 possessing a firearm or firearm ammunition.

4 SECTION 2. Section 30.06, Penal Code, is amended by adding
5 Subsections (e-1), (e-2), and (e-3) to read as follows:

6 (e-1) It is a defense to prosecution under this section
7 that:

8 (1) the license holder is:

9 (A) an owner of an apartment in a condominium
10 regime governed by Chapter 81, Property Code;

11 (B) an owner of a condominium unit governed by
12 Chapter 82, Property Code;

13 (C) a tenant or guest of an owner described by
14 Paragraph (A) or (B); or

15 (D) a guest of a tenant of an owner described by
16 Paragraph (A) or (B); and

17 (2) the license holder:

18 (A) carries or stores a handgun in the
19 condominium apartment or unit owner's apartment or unit;

20 (B) carries a handgun directly en route to or
21 from the condominium apartment or unit owner's apartment or unit;

22 (C) carries a handgun directly en route to or
23 from the license holder's vehicle located in a parking area
24 provided for residents or guests of the condominium property; or

25 (D) carries or stores a handgun in the license
26 holder's vehicle located in a parking area provided for residents
27 or guests of the condominium property.

1 (e-2) It is a defense to prosecution under this section
2 that:

3 (1) the license holder is a tenant of a leased premises
4 governed by Chapter 92, Property Code, or the tenant's guest; and

5 (2) the license holder:

6 (A) carries or stores a handgun in the tenant's
7 rental unit;

8 (B) carries a handgun directly en route to or
9 from the tenant's rental unit;

10 (C) carries a handgun directly en route to or
11 from the license holder's vehicle located in a parking area
12 provided for tenants or guests by the landlord of the leased
13 premises; or

14 (D) carries or stores a handgun in the license
15 holder's vehicle located in a parking area provided for tenants or
16 guests by the landlord of the leased premises.

17 (e-3) It is a defense to prosecution under this section
18 that:

19 (1) the license holder is a tenant of a manufactured
20 home lot governed by Chapter 94, Property Code, or the tenant's
21 guest; and

22 (2) the license holder:

23 (A) carries or stores a handgun in the tenant's
24 manufactured home;

25 (B) carries a handgun directly en route to or
26 from the tenant's manufactured home;

27 (C) carries a handgun directly en route to or

1 from the license holder's vehicle located in a parking area
2 provided for tenants or tenants' guests by the landlord of the
3 leased premises; or

4 (D) carries or stores a handgun in the license
5 holder's vehicle located in a parking area provided for tenants or
6 tenants' guests by the landlord of the leased premises.

7 SECTION 3. Section 30.07, Penal Code, is amended by adding
8 Subsections (e-1), (e-2), and (e-3) to read as follows:

9 (e-1) It is a defense to prosecution under this section
10 that:

11 (1) the license holder is:

12 (A) an owner of an apartment in a condominium
13 regime governed by Chapter 81, Property Code;

14 (B) an owner of a condominium unit governed by
15 Chapter 82, Property Code;

16 (C) a tenant or guest of an owner described by
17 Paragraph (A) or (B); or

18 (D) a guest of a tenant of an owner described by
19 Paragraph (A) or (B); and

20 (2) the license holder:

21 (A) carries or stores a handgun in the
22 condominium apartment or unit owner's apartment or unit;

23 (B) carries a handgun directly en route to or
24 from the condominium apartment or unit owner's apartment or unit;

25 (C) carries a handgun directly en route to or
26 from the license holder's vehicle located in a parking area
27 provided for residents or guests of the condominium property; or

1 (D) carries or stores a handgun in the license
2 holder's vehicle located in a parking area provided for residents
3 or guests of the condominium property.

4 (e-2) It is a defense to prosecution under this section
5 that:

6 (1) the license holder is a tenant of a leased premises
7 governed by Chapter 92, Property Code, or the tenant's guest; and

8 (2) the license holder:

9 (A) carries or stores a handgun in the tenant's
10 rental unit;

11 (B) carries a handgun directly en route to or
12 from the tenant's rental unit;

13 (C) carries a handgun directly en route to or
14 from the license holder's vehicle located in a parking area
15 provided for tenants or guests by the landlord of the leased
16 premises; or

17 (D) carries or stores a handgun in the license
18 holder's vehicle located in a parking area provided for tenants or
19 guests by the landlord of the leased premises.

20 (e-3) It is a defense to prosecution under this section
21 that:

22 (1) the license holder is a tenant of a manufactured
23 home lot governed by Chapter 94, Property Code, or the tenant's
24 guest; and

25 (2) the license holder:

26 (A) carries or stores a handgun in the tenant's
27 manufactured home;

1 (B) carries a handgun directly en route to or
2 from the tenant's manufactured home;

3 (C) carries a handgun directly en route to or
4 from the license holder's vehicle located in a parking area
5 provided for tenants or tenants' guests by the landlord of the
6 leased premises; or

7 (D) carries or stores a handgun in the license
8 holder's vehicle located in a parking area provided for tenants or
9 tenants' guests by the landlord of the leased premises.

10 SECTION 4. Section [82.002](#), Property Code, is amended by
11 adding Subsection (c-1) to read as follows:

12 (c-1) Section 82.121 applies to a condominium for which the
13 declaration was recorded before January 1, 1994.

14 SECTION 5. Subchapter C, Chapter [82](#), Property Code, is
15 amended by adding Section 82.121 to read as follows:

16 Sec. 82.121. POSSESSION OF FIREARM OR FIREARM AMMUNITION ON
17 CONDOMINIUM PROPERTY. (a) Unless possession of a firearm or
18 firearm ammunition on condominium property is prohibited by state
19 or federal law, a condominium unit owner, or a tenant or guest of a
20 condominium unit owner, or a guest of a tenant of a condominium unit
21 owner may not be prohibited from lawfully possessing, carrying,
22 transporting, or storing a firearm, any part of a firearm, or
23 firearm ammunition:

24 (1) in the condominium unit owner's unit;
25 (2) in a vehicle located in a parking area provided for
26 the residents or guests of the condominium property; or

27 (3) in other common element locations as necessary to:

1 (A) enter or exit the condominium property;

2 (B) enter or exit the condominium unit owner's
3 unit; or

4 (C) enter or exit a vehicle on the condominium
5 property or located in a parking area provided for residents or
6 guests of the condominium property.

7 (b) This section applies notwithstanding any provision of a
8 dedicatory instrument to the contrary and regardless of the date of
9 the provision's adoption.

10 SECTION 6. Subchapter A, Chapter 92, Property Code, is
11 amended by adding Section 92.026 to read as follows:

12 Sec. 92.026. POSSESSION OF FIREARMS OR FIREARM AMMUNITION
13 ON LEASED PREMISES. Unless possession of a firearm or firearm
14 ammunition on a landlord's property is prohibited by state or
15 federal law, a landlord may not prohibit a tenant or a tenant's
16 guest from lawfully possessing, carrying, transporting, or storing
17 a firearm, any part of a firearm, or firearm ammunition:

18 (1) in the tenant's rental unit;

19 (2) in a vehicle located in a parking area provided for
20 tenants or guests by the landlord of the leased premises; or

21 (3) in other locations controlled by the landlord as
22 necessary to:

23 (A) enter or exit the tenant's rental unit;

24 (B) enter or exit the leased premises; or

25 (C) enter or exit a vehicle on the leased
26 premises or located in a parking area provided by the landlord for
27 tenants or guests.

SECTION 7. Subchapter F, Chapter 94, Property Code, is amended by adding Section 94.257 to read as follows:

Sec. 94.257. POSSESSION OF FIREARM OR FIREARM AMMUNITION ON LEASED PREMISES. Unless possession of a firearm or firearm ammunition on a landlord's property is prohibited by state or federal law, a landlord may not prohibit a tenant or a tenant's guest from lawfully possessing, carrying, transporting, or storing a firearm, any part of a firearm, or firearm ammunition:

(1) in the tenant's manufactured home;

(2) in a vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises; or

(3) in other locations controlled by the landlord as necessary to:

(A) enter or exit the tenant's manufactured home;

(B) enter or exit the leased premises; or

(C) enter or exit a vehicle on the leased premises or located in a parking area provided by the landlord for tenants or tenants' guests.

SECTION 8. Sections 30.05, 30.06, and 30.07, Penal Code, as amended by this Act, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

H.B. No. 302

1 SECTION 9. Sections 92.026 and 94.257, Property Code, as
2 added by this Act, do not affect the enforceability of a provision
3 in a lease agreement entered into or renewed before the effective
4 date of this Act.

5 SECTION 10. This Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I certify that H.B. No. 302 was passed by the House on April 11, 2019, by the following vote: Yeas 101, Nays 44, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 302 was passed by the Senate on May 2, 2019, by the following vote: Yeas 25, Nays 6.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to the term of a parking permit issued to a residential tenant by a landlord.

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

SECTION 1. Subchapter A, Chapter 92, Property Code, is amended by adding Section 92.0132 to read as follows:

Sec. 92.0132. TERM OF PARKING PERMIT. A landlord who issues a parking permit to a tenant:

(1) must issue the permit for a term that is coterminous with the tenant's lease term; and

(2) may not terminate or suspend the permit until the date the tenant's right of possession ends.

SECTION 2. Section 92.0132, Property Code, as added by this Act, applies to a parking permit issued on or after the effective date of this Act.

SECTION 3. This Act takes effect January 1, 2020.

H.B. No. 1002

President of the Senate

Speaker of the House

I certify that H.B. No. 1002 was passed by the House on April 26, 2019, by the following vote: Yeas 125, Nays 14, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1002 was passed by the Senate on May 19, 2019, by the following vote: Yeas 27, Nays 4.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to the deceptive trade practice of charging exorbitant or excessive prices for necessities during a declared disaster.

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

SECTION 1. Section 17.45, Business & Commerce Code, is amended by adding Subdivision (17) to read as follows:

(17) "Building materials" includes lumber, windows, and other materials used in the construction or repair of improvements to real property.

SECTION 2. Section 17.46(b), Business & Commerce Code, as amended by Chapters 324 (S.B. 1488), 858 (H.B. 2552), and 967 (S.B. 2065), Acts of the 85th Legislature, Regular Session, 2017, is reenacted and amended to read as follows:

(b) Except as provided in Subsection (d) of this section, the term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:

- (1) passing off goods or services as those of another;
- (2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) using deceptive representations or designations

1 of geographic origin in connection with goods or services;

2 (5) representing that goods or services have
3 sponsorship, approval, characteristics, ingredients, uses,
4 benefits, or quantities which they do not have or that a person has
5 a sponsorship, approval, status, affiliation, or connection which
6 the person does not;

7 (6) representing that goods are original or new if
8 they are deteriorated, reconditioned, reclaimed, used, or
9 secondhand;

10 (7) representing that goods or services are of a
11 particular standard, quality, or grade, or that goods are of a
12 particular style or model, if they are of another;

13 (8) disparaging the goods, services, or business of
14 another by false or misleading representation of facts;

15 (9) advertising goods or services with intent not to
16 sell them as advertised;

17 (10) advertising goods or services with intent not to
18 supply a reasonable expectable public demand, unless the
19 advertisements disclosed a limitation of quantity;

20 (11) making false or misleading statements of fact
21 concerning the reasons for, existence of, or amount of price
22 reductions;

23 (12) representing that an agreement confers or
24 involves rights, remedies, or obligations which it does not have or
25 involve, or which are prohibited by law;

26 (13) knowingly making false or misleading statements
27 of fact concerning the need for parts, replacement, or repair

1 service;

2 (14) misrepresenting the authority of a salesman,
3 representative or agent to negotiate the final terms of a consumer
4 transaction;

5 (15) basing a charge for the repair of any item in
6 whole or in part on a guaranty or warranty instead of on the value of
7 the actual repairs made or work to be performed on the item without
8 stating separately the charges for the work and the charge for the
9 warranty or guaranty, if any;

10 (16) disconnecting, turning back, or resetting the
11 odometer of any motor vehicle so as to reduce the number of miles
12 indicated on the odometer gauge;

13 (17) advertising of any sale by fraudulently
14 representing that a person is going out of business;

15 (18) advertising, selling, or distributing a card
16 which purports to be a prescription drug identification card issued
17 under Section [4151.152](#), Insurance Code, in accordance with rules
18 adopted by the commissioner of insurance, which offers a discount
19 on the purchase of health care goods or services from a third party
20 provider, and which is not evidence of insurance coverage, unless:

21 (A) the discount is authorized under an agreement
22 between the seller of the card and the provider of those goods and
23 services or the discount or card is offered to members of the
24 seller;

25 (B) the seller does not represent that the card
26 provides insurance coverage of any kind; and

27 (C) the discount is not false, misleading, or

1 deceptive;

2 (19) using or employing a chain referral sales plan in
3 connection with the sale or offer to sell of goods, merchandise, or
4 anything of value, which uses the sales technique, plan,
5 arrangement, or agreement in which the buyer or prospective buyer
6 is offered the opportunity to purchase merchandise or goods and in
7 connection with the purchase receives the seller's promise or
8 representation that the buyer shall have the right to receive
9 compensation or consideration in any form for furnishing to the
10 seller the names of other prospective buyers if receipt of the
11 compensation or consideration is contingent upon the occurrence of
12 an event subsequent to the time the buyer purchases the merchandise
13 or goods;

14 (20) representing that a guaranty or warranty confers
15 or involves rights or remedies which it does not have or involve,
16 provided, however, that nothing in this subchapter shall be
17 construed to expand the implied warranty of merchantability as
18 defined in Sections 2.314 through 2.318 and Sections 2A.212 through
19 2A.216 to involve obligations in excess of those which are
20 appropriate to the goods;

21 (21) promoting a pyramid promotional scheme, as
22 defined by Section 17.461;

23 (22) representing that work or services have been
24 performed on, or parts replaced in, goods when the work or services
25 were not performed or the parts replaced;

26 (23) filing suit founded upon a written contractual
27 obligation of and signed by the defendant to pay money arising out

1 of or based on a consumer transaction for goods, services, loans, or
2 extensions of credit intended primarily for personal, family,
3 household, or agricultural use in any county other than in the
4 county in which the defendant resides at the time of the
5 commencement of the action or in the county in which the defendant
6 in fact signed the contract; provided, however, that a violation of
7 this subsection shall not occur where it is shown by the person
8 filing such suit that the person neither knew or had reason to know
9 that the county in which such suit was filed was neither the county
10 in which the defendant resides at the commencement of the suit nor
11 the county in which the defendant in fact signed the contract;

12 (24) failing to disclose information concerning goods
13 or services which was known at the time of the transaction if such
14 failure to disclose such information was intended to induce the
15 consumer into a transaction into which the consumer would not have
16 entered had the information been disclosed;

17 (25) using the term "corporation," "incorporated," or
18 an abbreviation of either of those terms in the name of a business
19 entity that is not incorporated under the laws of this state or
20 another jurisdiction;

21 (26) selling, offering to sell, or illegally promoting
22 an annuity contract under Chapter 22, Acts of the 57th Legislature,
23 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil
24 Statutes), with the intent that the annuity contract will be the
25 subject of a salary reduction agreement, as defined by that Act, if
26 the annuity contract is not an eligible qualified investment under
27 that Act or is not registered with the Teacher Retirement System of

1 Texas as required by Section 8A of that Act;

2 (27) subject to Section 17.4625, taking advantage of a
3 disaster declared by the governor under Chapter 418, Government
4 Code, or by the president of the United States by:

5 (A) selling or leasing fuel, food, medicine,
6 lodging, building materials, construction tools, or another
7 necessity at an exorbitant or excessive price; or

8 (B) demanding an exorbitant or excessive price in
9 connection with the sale or lease of fuel, food, medicine, lodging,
10 building materials, construction tools, or another necessity;

11 (28) using the translation into a foreign language of
12 a title or other word, including "attorney," "immigration
13 consultant," "immigration expert," "lawyer," "licensed," "notary,"
14 and "notary public," in any written or electronic material,
15 including an advertisement, a business card, a letterhead,
16 stationery, a website, or an online video, in reference to a person
17 who is not an attorney in order to imply that the person is
18 authorized to practice law in the United States;

19 (29) delivering or distributing a solicitation in
20 connection with a good or service that:

21 (A) represents that the solicitation is sent on
22 behalf of a governmental entity when it is not; or

23 (B) resembles a governmental notice or form that
24 represents or implies that a criminal penalty may be imposed if the
25 recipient does not remit payment for the good or service;

26 (30) delivering or distributing a solicitation in
27 connection with a good or service that resembles a check or other

negotiable instrument or invoice, unless the portion of the solicitation that resembles a check or other negotiable instrument or invoice includes the following notice, clearly and conspicuously printed in at least 18-point type:

"SPECIMEN-NON-NEGOTIABLE";

(31) in the production, sale, distribution, or promotion of a synthetic substance that produces and is intended to produce an effect when consumed or ingested similar to, or in excess of, the effect of a controlled substance or controlled substance analogue, as those terms are defined by Section 481.002, Health and Safety Code:

(A) making a deceptive representation or designation about the synthetic substance; or

(B) causing confusion or misunderstanding as to the effects the synthetic substance causes when consumed or ingested;

(32) a licensed public insurance adjuster directly or indirectly soliciting employment, as defined by Section 38.01, Penal Code, for an attorney, or a licensed public insurance adjuster entering into a contract with an insured for the primary purpose of referring the insured to an attorney without the intent to actually perform the services customarily provided by a licensed public insurance adjuster, provided that this subdivision may not be construed to prohibit a licensed public insurance adjuster from recommending a particular attorney to an insured; ~~[or]~~

(33) owning, operating, maintaining, or advertising a massage establishment, as defined by Section 455.001, Occupations

1 Code, that:

2 (A) is not appropriately licensed under Chapter
3 455, Occupations Code, or is not in compliance with the applicable
4 licensing and other requirements of that chapter; or

5 (B) is not in compliance with an applicable local
6 ordinance relating to the licensing or regulation of massage
7 establishments; or

8 (34) [~~33~~] a warrantor of a vehicle protection
9 product warranty using, in connection with the product, a name that
10 includes "casualty," "surety," "insurance," "mutual," or any other
11 word descriptive of an insurance business, including property or
12 casualty insurance, or a surety business.

13 SECTION 3. Subchapter E, Chapter 17, Business & Commerce
14 Code, is amended by adding Section 17.4625 to read as follows:

15 Sec. 17.4625. PRICE GOUGING DURING DECLARED DISASTER. (a)
16 In this section, "designated disaster period" means the period:

17 (1) beginning on the earliest of:

18 (A) the date the disaster occurs; or

19 (B) the date of:

20 (i) the proclamation or executive order of
21 the governor declaring the disaster; or

22 (ii) the declaration of the disaster by the
23 president of the United States, if any part of this state is named
24 in the federally declared disaster area; and

25 (2) ending on the 30th day after the date the disaster
26 declaration expires or is terminated.

27 (b) Notwithstanding any other provision of this subchapter,

1 Section 17.46(b)(27) applies only to an act described by that
2 subdivision that occurs during a designated disaster period in this
3 state.

4 SECTION 4. To the extent of any conflict, this Act prevails
5 over another Act of the 86th Legislature, Regular Session, 2019,
6 relating to nonsubstantive additions to and corrections in enacted
7 codes.

8 SECTION 5. The changes in law made by this Act apply only to
9 an act or practice that occurs on or after the effective date of
10 this Act. An act or practice that occurs before the effective date
11 of this Act is governed by the law in effect on the date the act or
12 practice occurred, and the former law is continued in effect for
13 that purpose.

14 SECTION 6. This Act takes effect September 1, 2019.

H.B. No. 1152

President of the Senate

Speaker of the House

I certify that H.B. No. 1152 was passed by the House on May 10, 2019, by the following vote: Yeas 112, Nays 29, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1152 was passed by the Senate on May 22, 2019, by the following vote: Yeas 28, Nays 3.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to the privacy of personal identifying information and the creation of the Texas Privacy Protection Advisory Council.

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

SECTION 1. Section 521.053, Business & Commerce Code, is amended by amending Subsection (b) and adding Subsection (i) to read as follows:

(b) A person who conducts business in this state and owns or licenses computerized data that includes sensitive personal information shall disclose any breach of system security, after discovering or receiving notification of the breach, to any individual whose sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made without unreasonable delay and in each case not later than the 60th day after the date on which the person determines that the breach occurred ~~[as quickly as possible]~~, except as provided by Subsection (d) or as necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(i) A person who is required to disclose or provide notification of a breach of system security under this section shall notify the attorney general of that breach not later than the 60th day after the date on which the person determines that the breach occurred if the breach involves at least 250 residents of

this state. The notification under this subsection must include:

(1) a detailed description of the nature and circumstances of the breach or the use of sensitive personal information acquired as a result of the breach;

(2) the number of residents of this state affected by the breach at the time of notification;

(3) the measures taken by the person regarding the breach;

(4) any measures the person intends to take regarding the breach after the notification under this subsection; and

(5) information regarding whether law enforcement is engaged in investigating the breach.

SECTION 2. (a) In this section, "council" means the Texas Privacy Protection Advisory Council created under this section.

(b) The Texas Privacy Protection Advisory Council is created to study data privacy laws in this state, other states, and relevant foreign jurisdictions.

(c) The council is composed of members who are residents of this state and appointed as follows:

(1) five members appointed by the speaker of the house of representatives, two of whom must be representatives of an industry listed under Subsection (d) of this section and three of whom must be members of the house of representatives;

(2) five members appointed by the lieutenant governor, two of whom must be representatives of an industry listed under Subsection (d) of this section and three of whom must be senators; and

1 (3) five members appointed by the governor, three of
2 whom must be representatives of an industry listed under Subsection
3 (d) of this section and two of whom must be either:

4 (A) a representative of a nonprofit organization
5 that studies or evaluates data privacy laws from the perspective of
6 individuals whose information is collected or processed by
7 businesses; or

8 (B) a professor who teaches at a law school in
9 this state or other institution of higher education, as defined by
10 Section 61.003, Education Code, and whose books or scholarly
11 articles on the topic of data privacy have been published.

12 (d) For purposes of making appointments of members who
13 represent industries under Subsection (c) of this section, the
14 speaker of the house of representatives, lieutenant governor, and
15 governor shall appoint members from among the following industries
16 and must coordinate their appointments to avoid overlap in
17 representation of the industries:

- 18 (1) medical profession;
- 19 (2) technology;
- 20 (3) Internet;
- 21 (4) retail and electronic transactions;
- 22 (5) consumer banking;
- 23 (6) telecommunications;
- 24 (7) consumer data analytics;
- 25 (8) advertising;
- 26 (9) Internet service providers;
- 27 (10) social media platforms;

1 (11) cloud data storage;

2 (12) virtual private networks; or

3 (13) retail electric.

4 (e) The speaker of the house of representatives and the
5 lieutenant governor shall each designate a co-chair from among
6 their respective appointments to the council who are members of the
7 legislature.

8 (f) The council shall convene on a regular basis at the
9 joint call of the co-chairs.

10 (g) The council shall:

11 (1) study and evaluate the laws in this state, other
12 states, and relevant foreign jurisdictions that govern the privacy
13 and protection of information that alone or in conjunction with
14 other information identifies or is linked or reasonably linkable to
15 a specific individual, technological device, or household; and

16 (2) make recommendations to the members of the
17 legislature on specific statutory changes regarding the privacy and
18 protection of that information, including changes to Chapter [521](#),
19 Business & Commerce Code, as amended by this Act, or to the Penal
20 Code, that appear necessary from the results of the council's study
21 under this section.

22 (h) Not later than September 1, 2020, the council shall
23 report the council's findings and recommendations to the members of
24 the legislature.

25 (i) The Department of Information Resources shall provide
26 administrative support to the council.

27 (j) Not later than the 60th day after the effective date of

1 this Act, the speaker of the house of representatives, the
2 lieutenant governor, and the governor shall appoint the members of
3 the council.

4 (k) The council is abolished and this section expires
5 December 31, 2020.

6 SECTION 3. (a) Except as provided by Subsection (b) of this
7 section, this Act takes effect September 1, 2019.

8 (b) Section [521.053](#), Business & Commerce Code, as amended by
9 this Act, takes effect January 1, 2020.

H.B. No. 4390

President of the Senate

Speaker of the House

I certify that H.B. No. 4390 was passed by the House on May 7, 2019, by the following vote: Yeas 140, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 4390 on May 24, 2019, by the following vote: Yeas 138, Nays 3, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 4390 was passed by the Senate, with amendments, on May 22, 2019, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to the right to vacate and avoid residential lease liability following the occurrence of family violence.

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

SECTION 1. Section 92.016, Property Code, is amended by amending Subsections (b), (c), and (c-1) and adding Subsection (b-1) to read as follows:

(b) A tenant may terminate the tenant's rights and obligations under a lease and may vacate the dwelling and avoid liability for future rent and any other sums due under the lease for terminating the lease and vacating the dwelling before the end of the lease term if the tenant complies with Subsection (c).

(b-1) A tenant may obtain relief under Subsection (b) if the tenant ~~and~~ provides the landlord or the landlord's agent:

(1) a copy of one or more of the following orders protecting the tenant or an occupant from family violence:

(A) ~~(1)~~ a temporary injunction issued under Subchapter F, Chapter 6, Family Code;

(B) ~~(2)~~ a temporary ex parte order issued under Chapter 83, Family Code; ~~or~~

(C) ~~(3)~~ a protective order issued under Chapter 85, Family Code; or

(D) an order of emergency protection under Article 17.292, Code of Criminal Procedure; or

1 (2) a copy of documentation of the family violence
2 against the tenant or an occupant from:

3 (A) a licensed health care services provider who
4 examined the victim;

5 (B) a licensed mental health services provider
6 who examined or evaluated the victim; or

7 (C) an advocate as defined by Section [93.001](#),
8 Family Code, who assisted the victim.

9 (c) A tenant may exercise the rights to terminate the lease
10 under Subsection (b), vacate the dwelling before the end of the
11 lease term, and avoid liability beginning on the date after all of
12 the following events have occurred:

13 (1) a judge signs an order described by Subsection
14 (b-1)(1) if the tenant obtained such an order ~~[(b)]~~;

15 (2) the tenant provides a copy of the relevant
16 documentation described by Subsection (b-1)(1) or (2), as
17 applicable, ~~[(b)]~~ to the landlord;

18 (3) the tenant provides written notice of termination
19 of the lease to the landlord on or before the 30th day before the
20 date the lease terminates;

21 (4) the 30th day after the date the tenant provided
22 notice under Subdivision (3) expires; and

23 (5) the tenant vacates the dwelling.

24 (c-1) If the family violence is committed by a cotenant or
25 occupant of the dwelling, a tenant may exercise the right to
26 terminate the lease under the procedures provided by Subsection
27 (b-1)(1)(A), (C), or (D) or (b-1)(2) ~~[(b-1) or (3)]~~ and Subsection

1 (c), except that the tenant is not required to provide the notice
2 described by Subsection (c)(3).

3 SECTION 2. Section [92.016](#), Property Code, as amended by
4 this Act, applies only to a lease entered into or renewed on or
5 after the effective date of this Act. A lease entered into or
6 renewed before the effective date of this Act is governed by the law
7 as it existed immediately before the effective date of this Act, and
8 that law is continued in effect for that purpose.

9 SECTION 3. This Act takes effect September 1, 2019.

<hr/> <p>President of the Senate</p>	<hr/> <p>Speaker of the House</p>
<p>I hereby certify that S.B. No. 234 passed the Senate on April 11, 2019, by the following vote: Yeas 31, Nays 0.</p>	

	<hr/> <p>Secretary of the Senate</p>
<p>I hereby certify that S.B. No. 234 passed the House on April 26, 2019, by the following vote: Yeas 138, Nays 1, two present not voting.</p>	

	<hr/> <p>Chief Clerk of the House</p>
--	---------------------------------------

Approved:

<hr/> <p>Date</p>

<hr/> <p>Governor</p>

AN ACT

relating to evidence in certain civil actions of a person's failure to forbid handguns on certain property.

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

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 95A to read as follows:

CHAPTER 95A. ACTIONS INVOLVING THE CARRYING OF HANDGUNS ON CERTAIN PROPERTY

Sec. 95A.0001. EVIDENCE OF FAILURE TO FORBID HANDGUNS. The fact that a card, sign, or other document described by Section 30.06(c)(3) or 30.07(c)(3), Penal Code, is not posted on the property of a business or any other evidence that a person failed to exercise the person's option to forbid the carrying of a handgun by a license holder on the property:

(1) is not admissible as evidence in a trial on the merits in an action:

(A) against a person, including a business or other entity, who owns, controls, or manages the property; and

(B) in which the cause of action arises from an injury sustained on the property; and

(2) does not support a cause of action described by Subdivision (1) against a person described by that subdivision.

SECTION 2. Chapter 95A, Civil Practice and Remedies Code, as added by this Act, does not apply to a cause of action that

1 accrued before the effective date of this Act.

2 SECTION 3. This Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 772 passed the Senate on April 23, 2019, by the following vote: Yeas 26, Nays 5.

Secretary of the Senate

I hereby certify that S.B. No. 772 passed the House on May 21, 2019, by the following vote: Yeas 88, Nays 51, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

AN ACT

relating to fees regarding a residential tenant's failure to timely pay rent.

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

SECTION 1. Section 92.019, Property Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (a-1) to read as follows:

(a) A landlord may not collect from ~~[charge]~~ a tenant a late fee for failing to pay any portion of the tenant's rent unless:

(1) notice of the fee is included in a written lease;

(2) the fee is ~~[a] reasonable [estimate of uncertain damages to the landlord that are incapable of precise calculation and result from late payment of rent]~~; and

(3) any portion of the tenant's rent has remained unpaid two ~~[one]~~ full days ~~[day]~~ after the date the rent was originally due.

(a-1) For purposes of this section, a late fee is considered reasonable if:

(1) the late fee is not more than:

(A) 12 percent of the amount of rent for the rental period under the lease for a dwelling located in a structure that contains not more than four dwelling units; or

(B) 10 percent of the amount of rent for the rental period under the lease for a dwelling located in a structure

1 that contains more than four dwelling units; or

2 (2) the late fee is more than the applicable amount
3 under Subdivision (1), but not more than uncertain damages to the
4 landlord related to the late payment of rent, including direct or
5 indirect expenses, direct or indirect costs, or overhead associated
6 with the collection of late payment.

7 (b) A late fee under this section may include an initial fee
8 and a daily fee for each day any portion of the tenant's rent
9 continues to remain unpaid, and the combined fees are considered a
10 single late fee for purposes of this section.

11 (c) A landlord who violates this section is liable to the
12 tenant for an amount equal to the sum of \$100, three times the
13 amount of the late fee collected ~~[charged]~~ in violation of this
14 section, and the tenant's reasonable attorney's fees.

15 SECTION 2. Subchapter A, Chapter 92, Property Code, is
16 amended by adding Section 92.0191 to read as follows:

17 Sec. 92.0191. STATEMENT OF LATE FEES. A tenant may request
18 that the landlord provide to the tenant a written statement of
19 whether the tenant owes a late fee to the landlord and, if so, the
20 amount of the late fee. On request of the tenant, the landlord
21 shall provide the statement to the tenant by any established means
22 regularly used for written communication between the landlord and
23 the tenant. A landlord's failure to respond does not affect the
24 tenant's liability for any late fee owed to the landlord.

25 SECTION 3. Section 92.019, Property Code, as amended by
26 this Act, applies only to a late fee under a lease entered into or
27 renewed on or after the effective date of this Act. A late fee under

1 a lease entered into or renewed before the effective date of this
2 Act is governed by the law as it existed immediately before the
3 effective date of this Act, and that law is continued in effect for
4 that purpose.

5 SECTION 4. This Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1414 passed the Senate on April 17, 2019, by the following vote: Yeas 26, Nays 5; and that the Senate concurred in House amendment on May 23, 2019, by the following vote: Yeas 27, Nays 4.

Secretary of the Senate

I hereby certify that S.B. No. 1414 passed the House, with amendment, on May 21, 2019, by the following vote: Yeas 94, Nays 52, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor

How the Late-Fee Bill Affects Rentals in Texas

August 08, 2019 | Texas REALTORS® Staff



Senate Bill 1414, which Texas REALTORS® supported in the 2019 legislative session, goes into effect Sept. 1 and amends the section in Chapter 92 of the Texas Property Code regulating fees for the late payment of rent.

The bill prohibits the collection of late fees until any portion of the rent has remained unpaid for two full days after the original due date.

Previously, late fees were allowed after one day.

The bill establishes a safe harbor where if late fees do not exceed a certain percentage, the fee is automatically considered reasonable under the law.

The bill continues to require that any late fee be reasonable. Under the safe harbor, for a rental dwelling located in a structure with no more than four dwelling units, a late fee is considered reasonable if the fee is not more than 12% of the amount of rent for the rental period under the lease.

For example: The tenant's monthly rent is \$1,000, and the tenant fails to timely pay rent. To fall under the safe harbor, the total amount of late fees the landlord collects for that late rent payment should be no more than \$120.

For a rental dwelling located in a structure that contains more than four dwelling units, a late fee is considered reasonable if the fee is not more than 10% of the amount of rent for the rental period under the lease.

A late fee that exceeds the safe-harbor amount can still be considered reasonable.

Staying under the safe harbor limits automatically makes those fees reasonable. But even a late fee exceeding those limits can be considered reasonable, as long as the fee is in line with the damages to the landlord that might reasonably result from the late payment of rent. For example, those damages could include the cost associated with the collection of a late payment.

The bill allows a tenant to request a written statement of his late fee.

The tenant can ask for a written statement of whether he owes a late fee and, if so, the amount of that fee. The landlord must provide the statement to the tenant through a means regularly used for written communication between the landlord and the tenant. For example, if the landlord and tenant usually communicate by email, that would be the way to deliver the written statement. A landlord's failure to respond, however, doesn't affect the tenant's liability for any late fee owed to the landlord.

This bill applies to leases entered into or renewed on or after Sept. 1, 2019.

Changes have been made to the *Residential Lease* (TXR 2001) and the *Residential Lease for a Multi-Family Property Unit* (TXR 2011) to reflect the increase in the number of days that the rent must remain unpaid before collecting a late fee, and other minor changes have been made as a result of additional legislation

View the redline changes of the [Residential Lease](#) and [Residential Lease for a Multi-Family Property Unit](#). The updated forms will be available on the blank forms page, as well as through our form vendors, on Sept. 1.



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 14, 2019

Ms. Shelly Atteberry
Cooke County Auditor
Cooke County Courthouse
101 South Dixon Street
Gainesville, Texas 76240

Opinion No. KP-0257

Re: Whether a private attorney or collection agency that contracts with a county to collect delinquent amounts owed to county courts may charge defendants a fee for the use of credit cards (RQ-0261-KP)

Dear Ms. Atteberry:

A commissioners court of a county “may enter into a contract with a private attorney or a public or private vendor for the provision of collection services for . . . debts and accounts receivable such as unpaid fines, fees, court costs, forfeited bonds, and restitution ordered paid,” among other items. TEX. CODE CRIM. PROC. art. 103.0031(a)(1). You ask whether a private attorney or a collection agency entering into such a contract may charge a fee for the use of credit cards to pay those debts.¹ You raise section 604A.0021 of the Business and Commerce Code in particular and ask whether that statute prohibits charging such a fee. Request Letter at 1.

Section 604A.0021, with limited exceptions, prohibits imposing a surcharge for the use of a credit card in certain circumstances: “In a sale of goods or services, a seller may not impose a surcharge on a buyer who uses a credit card for an extension of credit instead of cash, a check, or a similar means of payment.” TEX. BUS. & COM. CODE § 604A.0021(a). Before addressing your specific question, it is first necessary to address the validity of section 604A.0021 generally.

A federal district court addressing section 604A.0021 recently held that, as applied to certain merchants, the statute violates commercial free-speech rights under the First Amendment. *See Rowell v. Paxton*, 336 F. Supp. 3d 724, 732 (W.D. Tex. 2018). The district court relied on the U.S. Supreme Court decision in *Expressions Hair Design v. Schneiderman* to reach its decision.² *Id.* In *Expressions Hair Design*, the Court addressed a statute similar to section 604A.0021 that prohibited a seller from imposing “a surcharge on a holder who elects to use a credit card in lieu of payment by cash, check, or similar means.” 137 S. Ct. 1144, 1147 (2017). Concluding that the

¹See Letter from Ms. Shelly Atteberry, Cooke Cty. Auditor, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Dec. 18, 2018), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

²The district court initially found the state statute constitutional; however, the U.S. Supreme Court granted certiorari, vacated the district court’s judgment, and remanded the action for further proceedings in light of its decision in *Expressions Hair Design v. Schneiderman*. *See Rowell v. Pettijohn*, No. A-14-CA-190-LY, 2015 WL 10818660 (W.D. Tex. Feb. 4, 2015); *Rowell v. Pettijohn*, 137 S. Ct. 1431 (2017).

statute regulated “how sellers may communicate their prices,” the Court held that it regulated speech and required evaluation under a First Amendment analysis. *Id.* at 1151. Performing that analysis with regard to the Texas statute, the district court in *Rowell v. Paxton* concluded that section 604A.0021 did not withstand constitutional scrutiny as applied to the facts in that case. *Rowell*, 336 F. Supp. 3d at 732.

When a court determines that a statute is unconstitutional as applied, it normally invalidates the statute only as applied to the litigant in question and does not render the statute unenforceable with regard to other litigants or different factual circumstances. *See Fed. Elec. Comm’n v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 437 (2001). In holding section 604A.0021 unconstitutional as applied, the district court noted that the merchants in question did not seek “to extract additional profits by imposing surcharges in excess of the cost of accepting each credit card.” *Rowell*, 336 F. Supp. 3d at 730. Thus, the court concluded that the speech at issue was not deceptive or misleading. *Id.* However, the court acknowledged that the State is “free to prevent the dissemination of commercial speech that is false, deceptive, or misleading,” and suggested that the First Amendment analysis would be different if the merchants sought to impose higher surcharges than the swipe fees charged to the merchants by credit card companies. *Id.* Thus, circumstances may still exist where, as applied, section 604A.0021 operates to prohibit a credit card surcharge fee.

Even where section 604A.0021 remains valid, however, it is unlikely a court would find it applicable to the specific circumstances you describe. Section 604A.0021 does not apply to a “county . . . that accepts a credit card for the payment of fees, taxes, or other charges.” TEX. BUS. & COM. CODE § 604A.0021(b)(1). Thus, section 604A.0021 does not prohibit a county from imposing a surcharge on a payee using a credit card for the payment of fees, taxes, or other charges owed to the county. *Id.* You question whether that exception would also allow a private entity contracting with the county to charge a credit card fee. Request Letter at 2. The exemption in subsection (b)(1) expressly applies only to governmental entities and would not generally exempt a private attorney or collections agency. TEX. BUS. & COM. CODE § 604A.0021(b)(1). However, section 103.0031 authorizes a county to contract with “a private attorney or a public or private vendor for the provision of collection services for . . . fees.” TEX. CODE CRIM. PROC. art. 103.0031(a)(1). Reading these provisions together, if a county is entitled to impose a surcharge fee for credit card use, a court would likely conclude that a private attorney or collections agency acting as an agent for the county could collect that surcharge on behalf of the county when collecting other fees, taxes, or other charges. *See McKaughan v. Baldwin*, 153 S.W. 660, 661 (Tex. Civ. App.—Austin 1913, no writ) (explaining that an agent, acting “within the scope of the business for which such agency is created, stands in the shoes of the principal and may do anything in reference to such business that the principal could have done”).³

³Whether a county’s contract with a private attorney or debt collection agency creates an agency relationship will require evaluating the specific contract at issue and is not a determination appropriate for the opinion process.

S U M M A R Y

Section 604A.0021 of the Business and Commerce Code prohibits imposing a surcharge for the use of a credit card in certain instances. Although a recent judicial decision held section 604A.0021 unconstitutional as applied to specific facts, it remains enforceable in some contexts. But it does not apply to a county imposing a surcharge on a payee using a credit card for the payment of money owed to the county.

Section 103.0031 of the Code of Criminal Procedure authorizes a county to contract with a private attorney or a public or private vendor for the provision of collection services for fees. If a county is entitled to impose a surcharge fee for credit card use, a court would likely conclude that a private attorney or collections agency acting as agent for the county could collect that surcharge on behalf of the county when collecting other fees, taxes, or other charges.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

RYAN L. BANGERT
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

Figure 1. Schematic diagram of the experimental setup. The subject is seated in a chair and views the target through a video camera. The target is a light source that is controlled by a computer. The subject is instructed to move the hand to the target location. The distance between the hand and the target is measured by a laser range finder. The target is located at a distance of 100 cm from the hand. The target is a light source that is controlled by a computer. The subject is instructed to move the hand to the target location. The distance between the hand and the target is measured by a laser range finder. The target is located at a distance of 100 cm from the hand.

CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY

[illegible]

CAUSE NO. A:14-CV-190-LY

ssssss

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Before the court is the above styled and numbered action, which the United States Court of Appeals for the Fifth Circuit remanded to this court for further proceedings in light of *Expressions Hair Design v. Schneiderman*, ___ U.S. ____, 137 S.Ct. 1144 (2017). *See Rowell v. Pettijohn*, No. 15-50168 (5th Cir. May 25, 2017). Each plaintiff is a Texas merchant who alleges that as applied the Texas law prohibiting them from imposing surcharges on consumers' credit-card purchases, Texas Business and Commerce Code section 604A.0021, violates the merchants' commercial free-speech rights under the First Amendment to the United States Constitution. U. S. Const. amend. I; *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 561-66 (1980); Tex. Bus. & Comm. Code Ann. § 604A.0021 (West Supp. 2017) ("Anti-Surcharge law" or "law").¹ The

¹ Since this action was filed in 2014, the Texas Legislature has twice amended the Anti-Surcharge law and has redesignated the law from the Texas Finance Code to the Texas Business and Commerce Code. *See* Act of May 19, 2017, 85th Leg., R.S., ch.196, § 9, 2017 Tex. Sess. Laws Serv. 369, 371 (West) (codified at Tex. Bus. & Com. Code Ann. § 604A.0021 (West Supp. 2017)).

merchants request that the court permanently enjoin the State of Texas from enforcing the law against them.

The merchants filed this action in March 2014, contending that the Anti-Surcharge law is void for vagueness and violates the merchants' free-speech rights under the United States Constitution. Following a hearing on the State's motion to dismiss, the court concluded that the law properly regulated economic conduct—pricing—the law was not a regulation of speech, and the law was not void for vagueness.² Based on these holdings, the court dismissed Plaintiffs' Amended Complaint with prejudice. *Rowell v. Pettijohn*, No. 1:14-CV-190-LY, 2015 WL 10818660 (W.D. Tex. Feb. 4, 2015).

The merchants appealed and the circuit affirmed this court's decision. *Rowell v. Pettijohn*, 816 F.3d 73 (5th Cir. 2016). The merchants filed a petition for writ of certiorari to the Supreme Court of the United States, which the Supreme Court granted, vacated this court's judgment, and remanded the action to the circuit for further proceedings in light of *Expressions Hair Design*. *Rowell v. Pettijohn*, 137 S.Ct. 1431 (2017). The circuit then remanded the action to this court for further proceedings. *Rowell v. Pettijohn*, 865 F.3d 237, 238 (5th Cir. 2017).

On remand, the court allowed the parties to amend their pleadings and set a schedule for discovery, briefing, and oral argument on cross-motions for summary judgment. By the second amended complaint the merchants allege only that the Anti-Surcharge law violates their First

² Although Ken Paxton is the named Defendant, because Paxton appears in his official capacity as Attorney General of the State of Texas, the court refers to the Defendant as the "State."

Amendment rights to freedom of speech.³ Pending, are Plaintiffs' Motion for Summary Judgment and For a Permanent Injunction and the State's Motion for Summary Judgment filed January 31, 2018 (Clerk's Document Nos. 78 & 79), each side's response, and each side's reply (Clerk's Document Nos. 86, 87, 88, & 89). Also before the court is the Corrected Plaintiffs' Statement of Undisputed Material Facts filed February 1, 2018 (Clerk's Document No. 83). On March 13, 2018, the court held a hearing on the cross-motions for summary judgment at which all parties were represented by counsel. Having considered the motions, responses, replies, Plaintiffs' Statement of Undisputed Material Facts, the case file, the arguments of counsel, and the applicable law, the court renders the following.

The amended Anti-Surcharge law provides:

(a) In a sale of goods or services, a seller may not impose a surcharge on a buyer who uses a credit card for an extension of credit instead of cash, a check, or a similar means of payment.

(b) This section does not apply to:

(1) a state agency, county, local governmental entity, or other governmental entity that accepts a credit card for the payment of fees, taxes, or other charges;
or

(2) a private school that accepts a credit card for payment of fees or other charges, as provided by Section 111.002.

(c) This section does not create a cause of action against an individual for violation of this section.

³ The merchants' amended pleading does not include their previously raised argument that the Anti-Surcharge law is impermissibly vague.

Tex. Bus. & Com. Code Ann. § 604A.0021 (West Supp. 2017). Additionally, the related enforcement provision was amended in 2015 and 2017, and redesignated from the Texas Finance Code to the Texas Business and Commerce Code. *See* Act of May 19, 2017, 85th Leg., R.S., ch.196, § 2, 2017 Tex. Sess. Laws Serv. 369, 370 (West) (Tex. Bus. & Com. Code § 604A.003 (West Supp. 2017)). Although the law has been amended, it has not substantively changed since this action was filed in 2014.

The undisputed facts are that each merchant would like to tell their customers, without fear of the State enforcing the Anti-Surcharge law, that there is a “surcharge” if a customer pays for a purchase with a credit card and that there is “no additional charge” if the customer pays with cash or a check. More to the point, the merchants want to say why the surcharge is assessed—because of credit-card swipe fees. Further, the merchants will charge a surcharge that does not exceed the amount of the credit-card swipe fee the merchant pays to a credit-card company.

Also proceeding in tandem with this action are other federal-court cases challenging similar state anti-surcharge laws. *See Italian Colors Rest. v. Becerra*, 878 F.3d 1165 (9th Cir. 2018) (affirming summary judgment in favor of plaintiffs that as-applied the California anti-surcharge law violated plaintiffs’ First Amendment free-speech rights); *Expressions Hair Design v. Schniederman*, 877 F.3d 99 (2d Cir. 2017) (on remand from Supreme Court, circuit certified question to New York Court of Appeals: “Does a merchant comply with New York’s General Business Law § 518 so long as the merchant posts the total-dollars-and-cents price charged to credit card users?”); *Expressions Hair Design v. Schniederman*, 92 N.E.3d 803 (N.Y. 2018) (certified question accepted); *Dana’s R.R. Supply v. Attorney General, Fla.*, 807 F.3d 1237 (11th Cir. 2015), *cert. denied*, 137 S.Ct. 1452 (2017) (reversing summary judgment in favor of Florida, holding Florida’s anti-surcharge law

unconstitutional abridgment of merchants' free-speech rights, and remanding to district court for further proceedings); *Dana's R.R. Supply*, No. 4:14-CV-0134-RH/CAS (N.D. Fla. May 2, 2017) (judgment rendered enjoining Florida from taking action to enforce Florida's anti-surcharge law).

Expressions Hair Design

The Supreme Court's opinion in *Expressions Hair Design* provides the starting point for this court's analysis. *Expressions Hair Design* held that New York's anti-surcharge law, which is similar to Texas's law, was not a typical price-control regulation because the law tells a merchant nothing about the amount the merchant is allowed to collect from a cash or credit-card-paying consumer. 137 S.Ct. at 1150-51. Under the law,

Sellers are free to charge \$10 for cash and \$9.70, \$10, \$10.30, or any other amount for credit. What the law does regulate is how sellers may communicate their prices. A merchant who wants to charge \$10 for cash and \$10.30 for credit may not convey that price any way he pleases. He is not free to say "\$10, with a 3% credit card surcharge" or "\$10 plus \$0.30 for credit" because both of those displays identify a single sticker price—\$10—that is less than the amount credit card users will be charged.

Id. at 1151. The law regulates the communication of prices, not the prices charged, therefore, the New York law regulates speech. *Id.* The Supreme Court remanded the action for further inquiry about whether the New York law, as a speech regulation, survives First Amendment scrutiny. *Id.* The Supreme Court recognized the parties' dispute about whether the New York law is a valid commercial-speech regulation. However, as the record had yet to be developed on the matter, the Court declined to consider in the first instance whether the law survives First Amendment scrutiny, and remanded the action for a speech-regulation analysis.⁴

⁴ The Supreme Court also summarily addressed the New York merchants' argument that the law was unconstitutionally vague and held that the law was not vague as applied to the merchants.

Proceedings in this action are at a similar crossroads; the action is before this court for a First Amendment speech-regulation analysis.

Summary-judgment review

Summary judgment shall be rendered when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–25 (1986); *Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998). If the moving party carries its burden of showing that there is no genuine dispute as to any material fact, the burden shifts to the nonmovant to introduce specific facts or produce evidence that shows the existence of a genuine dispute regarding a material fact that prevents the grant of summary judgment in the movant’s favor. Fed. R. Civ. P. 56(e); *see also Celotex*, 477 U.S. at 322–23. A dispute regarding a material fact is “genuine” if the evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

On cross motions for summary judgment, the court reviews each party’s motion independently, viewing the evidence and inferences in the light most favorable to the nonmoving party, determining for each side, whether judgment may be rendered in accordance with the Rule 56 standard. *Amerisure Ins. Co. v. Navigators Ins. Co.*, 611 F.3d 299, 304 (5th Cir. 2010) (internal citation and quotation omitted); *Shaw Constr. v. ICF Kaiser Engrs., Inc.*, 395 F.3d 533 fn. 8 & 9 (5th Cir. 2004).

Analysis

Initially, the court finds no substantive difference between the New York anti-surge law and the Texas law. Further, the court finds that the Anti-Surge law restricts only commercial speech, that is, an expression related solely to the economic interests of the speaker and its audience. *Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council*, 425 U.S. 748, 762 (1976). The First Amendment, as applied to the States through the Fourteenth Amendment, protects commercial speech from unwarranted governmental regulation. *Id.* at 761-62.

[O]ur decisions have recognized the commonsense distinction between speech proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varieties of speech. The Constitution therefore accords a lesser protection to commercial speech than to other constitutionally guaranteed expression. The protection available for particular commercial expression turns on the nature both of the expression and of the governmental interests served by its regulation.

Central Hudson Gas & Elec. Corp., 447 U.S. at 561-63 (citations omitted).

A state seeking to uphold a commercial restriction on speech carries the burden of justifying its law. *American Academy of Implant Dentistry v. Parker*, 860 F.3d 300, 306 (5th Cir. 2017). Courts evaluate four questions to determine whether a state has met its burden to justify a commercial-speech regulation: (1) whether the speech concerns lawful activity and is not misleading; (2) whether the asserted governmental interest justifying the regulation is substantial; (3) whether the regulation directly advances the governmental interest asserted; and (4) whether the regulation is more extensive than necessary to serve that interest. *Central Hudson Gas & Elec. Corp.*, 447 U.S. at 566.

Deceptive or misleading speech

The State argues that the Anti-Surcharge law is a legitimate restriction against deceptive and misleading commercial speech and therefore, no further First Amendment analysis is required. *See Id.* at 563-64.

A state is “free to prevent the dissemination of commercial speech that is false, deceptive, or misleading.” *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 638 (1985). Here, the State contends that each of the merchants intends to impose a blanket surcharge on all credit-card purchases. This blanket-surcharge system will thereby provide the merchants with additional profit on certain credit-card purchases, when the fee actually paid to the credit-card issuer is not as large as the surcharge imposed for a particular transaction. Further, the State argues that the customer will not be truthfully informed of what is actually occurring—the customer will be led to believe that the merchants are merely passing along swipe fees when in reality the merchants will be pocketing the additional money collected in excess of the swipe fee charged.

The State’s argument holds only if the merchants here seek to impose surcharges that are higher than the swipe fees charged to the merchants by credit-card companies. That, however, is not the merchants’ argument. The merchants have made clear since filing this action that the amount of surcharge “would not exceed the amount of the merchant fees” that they must pay to credit-card companies. The merchants in this as-applied action are not seeking to extract additional profits by imposing surcharges in excess of the cost of accepting each credit card. Instead the merchants wish “to prominently and conspicuously display the exact amount of the surcharge, expressed as a percentage of the total price,” and to limit the amount of the surcharge to the swipe fees incurred.

The merchants here have submitted declarations saying that they wish to put up signs stating—“[f]or example”—“a 3% surcharge will be assessed for every credit card purchase.” The court finds that the submitted declarations are only examples, and that the merchants have made it clear that they will not charge a 3% surcharge if that amount were to exceed the amount of the swipe fees they pay. As the Supreme Court took the plaintiffs at their word in *Expressions Hair Design* as to the scope of their as-applied challenge, so to will this court in evaluating the constitutionality of Texas’s Anti-Surcharge law as applied to the merchants. Contrary to the State’s argument, the court finds no deceptive or misleading speech at issue in this action.

Texas’s interests in protecting consumer welfare and promoting commerce

The State argues that if the court concludes that the merchants’ proposed speech is not deceptive or misleading, the merchants’ claims fail because under the *Central Hudson* test, a state may regulate even “truthful and non-deceptive speech that merely proposes a commercial transaction” if: (1) there is a substantial state interest; (2) the regulation “directly and materially advances” that interest; and (3) the regulation is “narrowly drawn.” *Bailey v. Morales*, 190 F.3d 320, 323 (5th Cir. 1999); *see also Central Hudson Gas & Elec. Corp.*, 447 U.S. at 563-64. The State argues that the Anti-Surcharge law directly advances Texas’s substantial interests in protecting consumer welfare and promoting commerce.

A state may not justify a law on the grounds that consumers “would make bad decisions if given truthful information.” *See Thompson v. Western States Med. Ctr.*, 535 U.S. 357, 374 (2002). The court concludes that the State has failed to demonstrate that protecting consumer welfare and promoting commerce are “actual interests served by the restriction,” as opposed to a *post hoc* defense of the law. Unlike rational-basis review, courts applying *Central Hudson* may not come up with

hypothetical justifications for the law being challenged. *Edenfield v. Fane*, 507 U.S. 761, 770 (1993). Instead, the court must evaluate the law in light of “the precise interests put forward by the State.” *Id.* The court finds that, other than a statement from the law’s legislative history that one official wanted to “protect the consumer,” the State has failed to provide any basis other than a generalized interest in consumer protection, which the court concludes is too abstract to provide an appropriate benchmark.⁵

Even if the State’s asserted interests could be found to be adequate, there is no actual, empirical evidence before the court of harm to consumers or commerce, past or present, in restricting the merchants in this action from communicating to their customers that they will charge a surcharge for a credit-card purchase in an amount not to exceed the swipe fee charged the merchant.

Advancing the State’s substantial interests and narrowly tailored

The third and fourth prongs of *Central Hudson* are at the core of the constitutional analysis: the State bears the burden of showing that the challenged law “directly and materially advances a substantial state interest in a manner no more extensive than necessary to serve that interest.” *American Academy of Implant Dentistry*, 860 F.3d at 308-09 (quoting *Central Hudson Gas & Elec. Corp.*, 447 U.S. at 566). The burden “is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.” *Id.* (quoting *Edenfield*, 507 U.S. at 770-71).

⁵ In the recent round of summary-judgment motions filed in this action, the State argues for the first time that consumers will be “fleece[d]” by paying surcharges that exceed the swipe fees. The court finds no evidence of this interest as an actual interest served by the restriction. The court declines to consider this state interest and considers only actual interests, if any, served by the surcharge restriction.

Even if there exists a viable basis here for the State's interests, the law nevertheless fails because the Anti-Surcharge law is "more extensive than is necessary to serve that interest." *Central Hudson Gas & Elec. Corp.*, 447 U.S. at 566. The court finds persuasive the reasoning in *Dana's R.R. Supply*: if the State is concerned that surcharges will result in profiteering, the State could "cap the difference in price that can be charged to customers paying with cash and those using credit cards." 807 F.3d at 1250. Alternatively, the State could require merchants to charge a surcharge that is no more than the swipe fees associated with any particular transaction. These ideas would advance the State's goals without suppressing information by prohibiting the merchants from telling their customers that they will pay more for using a credit card.

Conclusion

In light of *Expressions Hair Design*, the court concludes that the Texas Anti-Surcharge law is a commercial-speech regulation. Therefore, to survive as a constitutionally allowable governmental speech regulation, the State is required to establish that the Anti-Surcharge law directly advances a substantial governmental interest and is not more extensive than necessary to serve that interest. *Central Hudson Gas & Elec. Corp.*, 447 U.S. at 566. The court concludes that this the State has failed to do. The Texas Anti-Surcharge law as applied violates the merchants' commercial free-speech rights under the First Amendment. The court will grant the merchants' motion for summary judgment and will permanently enjoin the State of Texas from enforcing the Anti-Surcharge law against the merchants.

IT IS ORDERED that Plaintiffs' Motion for Summary Judgment and for a Permanent Injunction filed January 31, 2018 (Clerk's Document No. 79) are **GRANTED**.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment filed January 31, 2018 (Clerk's Document No. 78) is **DENIED**.

SIGNED this 16th day of August, 2018.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE



RESIDENTIAL LEASE

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS®, INC. IS NOT AUTHORIZED.
©Texas Association of REALTORS®, Inc. 20182019

1. PARTIES: The parties to this lease are:

the owner of the Property, Landlord,: _____; and

Tenant(s): _____.

2. PROPERTY: Landlord leases to Tenant the following real property:

Address: _____
legally described as: _____

in _____ County, Texas, together with the following non-real-property items: _____.

The real property and the non-real-property are collectively called the "Property".

3. TERM:

A. Primary Term: The primary term of this lease begins and ends as follows:

Commencement Date: _____ Expiration Date: _____.

B. Delay of Occupancy: Tenant must occupy the Property within 5 days after the Commencement Date. If Tenant is unable to occupy the Property by the 5th day after the Commencement Date because of construction on the Property or a prior tenant's holding over of the Property, Tenant may terminate this lease by giving written notice to Landlord before the Property becomes available to be occupied by Tenant, and Landlord will refund to Tenant the security deposit and any rent paid. Landlord will abate rent on a daily basis for a delay caused by construction or a prior tenant's holding over. This paragraph does not apply to any delay in occupancy caused by cleaning, repairs, or make-ready items.

4. AUTOMATIC RENEWAL AND NOTICE OF TERMINATION: This lease automatically renews on a month-to-month basis unless Landlord or Tenant provides the other party written notice of termination as provided in Paragraph 4A. Oral notice of termination is not sufficient under any circumstances. Time is of the essence for providing notice of termination (strict compliance with dates by which notice must be provided is required). The date on which rent is due does not apply to the requirement for providing written notice of termination. If a box is not checked under Paragraph 4A, Paragraph 4A(1) will apply. If a box is not checked under Paragraph 4B, Paragraph 4B(1) will apply.

A. This lease automatically renews on a month-to-month basis unless Landlord or Tenant provides the other party written notice of termination not less than: *(Check only one box.)*

- ☐ (1) 30 days before the Expiration Date.
☐ (2) _____ days before the Expiration Date.

If Landlord or Tenant fails to provide the other party timely written notice of termination as required by paragraph 4A, the lease automatically renews on a month-to-month basis. The Landlord or Tenant then must provide a subsequent written notice of termination as required by paragraph 4B.

- B. If this lease automatically renews on a month-to-month basis, it will continue to renew on a month-to-month basis until either party provides written notice of termination to the other party and the notice of termination will be effective: *(Check only one box.)*
- ☐ (1) on the last day of the month following the month in which the notice is given. Landlord is not obligated to prorate rent even if Tenant surrenders the Property before the termination date.
 - ☐ (2) on the date designated in the notice but not sooner than 30 days after the notice is given and, if necessary, rent will be prorated on a daily basis.

5. RENT:

- A. Monthly Rent: Tenant will pay Landlord monthly rent in the amount of \$_____ for each full month during this lease. The first full month's rent is due and payable not later than _____ by *(select one or more)*: ☐ cashier's check ☐ electronic payment ☐ money order ☐ personal check or ☐ other means acceptable to Landlord.
- Thereafter, Tenant will pay the monthly rent so that Landlord receives the monthly rent on or before *(check only one box)*:

- ☐ (1) the first day of each month during this lease.
 - ☐ (2) _____.
- Weekends, holidays, and mail delays do not excuse Tenant's obligation to timely pay rent.

- B. Prorated Rent: On or before _____ Tenant will pay Landlord \$_____ as prorated rent from the Commencement Date through the last day of the month in which this lease begins.

- C. Place of Payment: Unless this lease provides otherwise, Tenant will remit all amounts due to Landlord under this lease to the following person or entity at the place stated and make all payments payable to the named person or entity. Landlord may later designate, in writing, another person or place to which Tenant must remit amounts due under this lease.

Name: _____
Address: _____

Notice: Place the Property address and Tenant's name on all payments.

- D. Method of Payment:

- (1) Tenant must pay all rent timely and without demand, deduction, or offset, except as permitted by law or this lease.
- (2) Time is of the essence for the payment of rent (strict compliance with rental due dates is required).
- (3) Unless the parties agree otherwise, Tenant may not pay rent in cash and will pay all rent by *(select one or more)*: ☐ cashier's check ☐ electronic payment ☐ money order ☐ personal check or ☐ other means acceptable to Landlord. Landlord ☐ may or ☐ may not charge a reasonable fee to process or accept payment by *(select one or more only if Landlord indicates a reasonable fee may be charged)*: ☐ cashier's check ☐ electronic payment ☐ money order ☐ personal check or ☐ other means acceptable to Landlord.
- (4) Landlord ☐ requires ☐ does not require Tenant(s) to pay monthly rents by one payment.
- (5) If Tenant fails to timely pay any amounts due under this lease or if any check of Tenant is not honored by the institution on which it was drawn, Landlord may require Tenant to pay such amount and any

subsequent amounts under this lease in certified funds. This paragraph does not limit Landlord from seeking other remedies under this lease for Tenant's failure to make timely payments with good funds.

- E. **Rent Increases:** There will be no rent increases through the primary term. Landlord may increase the rent that will be paid during any month-to-month renewal period by providing at least 30 days written notice to Tenant.

6. LATE CHARGES:

- A. If Landlord does not actually receive a rent payment in the full amount at the designated place of payment by the ____ day of each month at 11:59pm, Tenant will pay Landlord for each late payment:

- (1) an initial late charge equal to (*check one box only*): ☐ (a) \$_____; or ☐ (b) _____% of one month's rent; **and**
(2) additional late charges of \$_____ per day thereafter until rent and late charges are paid in full. Additional late charges for any one payment may not exceed more than 30 days.

Notice: §92.019, Property Code prohibits assessing a late fee until rent has remained unpaid for at least ~~one~~ two full days after the date on which the rent is due.

- B. For the purposes of paying rent and any late charges, the mailbox is not the agent for receipt for Landlord (the postmark date is not the date Landlord receives the payment). The parties agree that the late charge is ~~based on a reasonable estimate of~~ based on uncertain damages to the Landlord ~~that are incapable of precise calculation and result from~~ related to the late payment of rent, including direct or indirect expenses, direct or indirect costs, or overhead associated with the collection of late payment. Landlord's acceptance of a late charge does not waive Landlord's right to exercise remedies under Paragraph 27.

7. **RETURNED PAYMENT:** Tenant will pay Landlord \$_____ for each payment Tenant tenders to Landlord which is returned or not honored by the institution on which it is drawn for any reason, plus any late charges until Landlord receives payment. Tenant must make any returned payment good by paying such amount(s) plus any associated charges in certified funds.

8. **APPLICATION OF FUNDS:** ~~Regardless of any notation on a payment, Landlord may apply funds received from Tenant first to any non-rent obligations of Tenant, including but not limited to, late charges, returned payment charges, repairs, brokerage fees, periodic utilities, pet charges, and then to rent.~~

9. PETS:

- A. Unless the parties agree otherwise in writing, Tenant may not permit, even temporarily, any pet on the Property (including but not limited to any mammal, reptile, bird, fish, rodent, or insect). An assistance animal is not considered a pet.
- B. If Tenant violates this Paragraph 9 or any agreement to keep a pet on the Property, Landlord may take all or any of the following action:
- (1) declare Tenant to be in default of this lease and exercise Landlord's remedies under Paragraph 27;
- (2) charge Tenant, as additional rent, an initial amount of \$____ and \$_____ per day thereafter per pet for each day Tenant violates the pet restrictions;
- (3) remove or cause to be removed any unauthorized pet and deliver it to appropriate local authorities by providing at least 24-hour written notice to Tenant of Landlord's intention to remove the unauthorized pet; and
- (4) charge to Tenant the Landlord's cost to:
- (a) remove any unauthorized pet;
- (b) exterminate the Property for fleas and other insects;

- (c) clean and deodorize the Property's carpets and drapes; and
- (d) repair any damage to the Property caused by the unauthorized pet.

C. When taking any action under Paragraph 9B Landlord will not be liable for any harm, injury, death, or sickness to any pet.

10. SECURITY DEPOSIT:

- A. Security Deposit: On or before execution of this lease, Tenant will pay a security deposit to Landlord in the amount of \$_____ by (select one or more): ☐ cashier's check ☐ electronic payment ☐ money order ☐ personal check or ☐ other means acceptable to Landlord. "Security deposit" has the meaning assigned to that term in §92.102, Property Code. Any additional deposits Tenant pays to Landlord, other than the security deposit, will become part of the security deposit.
- B. Interest: No interest or income will be paid to Tenant on the security deposit. Landlord may place the security deposit in an interest-bearing or income-producing account and any interest or income earned will be paid to Landlord or Landlord's representative.
- C. Refund: Tenant must give Landlord at least thirty (30) days written notice of surrender before Landlord is obligated to account for or refund the security deposit. Any refund of the security deposit will be made payable to all Tenants named in this lease.

Notices about Security Deposits:

- (1) §92.108, Property Code provides that a tenant may not withhold payment of any portion of the last month's rent on grounds that the security deposit is security for unpaid rent.
- (2) Bad faith violations of §92.108 may subject a tenant to liability up to 3 times the rent wrongfully withheld and the landlord's reasonable attorney's fees.
- (3) The Property Code does not obligate a landlord to return or account for the security deposit until the tenant surrenders the Property and gives the landlord a written statement of the tenant's forwarding address, after which the landlord has 30 days in which to account.
- (4) "Surrender" is defined in Paragraph 16 of this lease.
- (5) One may view the Texas Property Code at the Texas Legislature's website which, as of the date shown in the lower left-hand corner of this form, is <http://www.statutes.legis.state.tx.us/>.

D. Deductions:

- (1) Landlord may deduct reasonable charges from the security deposit for:
 - (a) damages to the Property, excluding normal wear and tear, and all reasonable costs associated to repair the Property;
 - (b) costs for which Tenant is responsible to clean, deodorize, exterminate, and maintain the Property;
 - (c) unpaid or accelerated rent;
 - (d) unpaid late charges;
 - (e) unpaid utilities and utility expenses Landlord incurs to maintain utilities to the Property as required by this Lease;
 - (f) unpaid pet charges;
 - (g) replacing unreturned keys, garage door openers, security devices, or other components;
 - (h) the removal of unauthorized locks or fixtures installed by Tenant;
 - (i) Landlord's cost to access the Property if made inaccessible by Tenant;
 - (j) missing or burned-out light bulbs and fluorescent tubes (at the same location and of the same type and quality that are in the Property on the Commencement Date);

- (k) packing, removing, and storing abandoned property;
- (l) removing abandoned or illegally parked vehicles;
- (m) costs of reletting (as defined in Paragraph 27), if Tenant is in default;
- (n) attorney's fees, costs of court, costs of service, and other reasonable costs incurred in any legal proceeding against Tenant;
- (o) mailing costs associated with sending notices to Tenant for any violations of this lease;
- (p) any other unpaid charges or fees or other items for which Tenant is responsible under this lease;
- (q) cost to restore walls, flooring, landscaping or any alteration to the Property not approved in writing by Landlord;
- (r) damages to the Property caused by smoking, including but not limited to stains, burns, odors, and removal of debris; and
- (s) costs to rekey certain security devices, as provided in Paragraph 19.

(2) If deductions exceed the security deposit, Tenant will pay to Landlord the excess within 10 days after Landlord makes written demand.

11. UTILITIES:

- A. Tenant will pay all connection fees, service fees, usage fees, and all other costs and fees for all utilities to the Property (for example, electricity, gas, water, wastewater, garbage, telephone, alarm monitoring systems, cable, and Internet connections) except the following which Landlord will pay: _____

Unless otherwise agreed, amounts under this paragraph are payable directly to the service providers.

- B. Unless provided by Landlord, Tenant must, at a minimum, keep the following utilities on, if available, at all times this lease is in effect: gas; electricity; water; wastewater; and garbage services.

Notice: Before signing this lease, Tenant should determine if all necessary utilities are available to the Property and are adequate for Tenant's use.

12. USE AND OCCUPANCY:

- A. Occupants: Tenant may use the Property as a private residence only. The only persons Tenant may permit to reside on the Property during the term of this lease are (*include names and ages of all occupants*): _____

- B. Phone Numbers and E-mail: Tenant must promptly inform Landlord of any changes in Tenant's phone numbers (home, work, and mobile) and e-mail not later than 5 days after a change.

- C. HOA Rules: Tenant must comply with any owners' association rules or restrictive covenants affecting the Property. Tenant will reimburse Landlord for any fines or other charges assessed against Landlord for violations by Tenant of any owners' association rule or restrictive covenant, and any resulting administrative fees assessed by Landlord's agents or any other entity as provided by law.

- D. Prohibitions: Unless otherwise authorized by this lease, Tenant may not install or permit any of the following on the Property, even temporarily: a spa, hot tub, above-ground pool, trampoline, or any item which causes a suspension or cancellation of insurance coverage or an increase in insurance premiums. Tenant may not permit any part of the Property to be used for: (1) any activity which is a nuisance,

offensive, noisy, or dangerous; (2) the repair of any vehicle; (3) any business of any type, including but not limited to child care; (4) any activity which violates any zoning ordinance, owners' association rule, or restrictive covenant; (5) any illegal or unlawful activity; or (6) activity that obstructs, interferes with, or infringes on the rights of other persons near the Property.

- E. Guests: Tenant may not permit any guest to stay on the Property longer the amount of time permitted by any owners' association rule or restrictive covenant or _____ days without Landlord's written permission, whichever is less.
- F. Common Areas: Landlord is not obligated to pay any non-mandatory or user fees for Tenant's use of any common areas or facilities (for example, pool or tennis courts).

13. PARKING RULES: Tenant may not permit more than _____ vehicles, including but not limited to automobiles, trucks, recreational vehicles, trailers, motorcycles, all-terrain vehicles, jet skis, and boats, on the Property unless authorized by Landlord in writing. Tenant may not park or permit any person to park any vehicles in the yard. Tenant may permit vehicles to be parked only in drives, garages, designated common parking areas, or in the street if not prohibited by law or an owners' association. Tenant may not store or permit any person to store any vehicles on or adjacent to the Property or on the street in front of the Property. In accordance with applicable state and local laws, Landlord may have towed, at Tenant's expense: (a) any inoperative vehicle on or adjacent to the Property; (b) any vehicle parked in violation of — this paragraph or any additional parking rules made part of this lease; or (c) any vehicle parked in violation of any law, local ordinance, or owners' association rule. Tenant must promptly inform Landlord of any changes in Tenant's vehicle information (type, year, make, model, and license plate number including state) not later than 5 days after a change.

14. ACCESS BY LANDLORD:

- A. Advertising: Landlord may prominently display a "For Sale" or "For Lease" or similarly worded sign on the Property during the term of this lease or any renewal period. Landlord or Landlord's contractor may take interior or exterior photographs or images of the Property and use the photographs or images in any advertisements to lease or sell the Property.
- B. Access: Before accessing the Property, Landlord or anyone authorized by Landlord will attempt to first contact Tenant, but may enter the Property at reasonable times without notice to make repairs or to show the Property to prospective tenants or buyers, inspectors, fire marshals, lenders, appraisers, or insurance agents. Additionally, Landlord or anyone authorized by Landlord may peacefully enter the Property at reasonable times without first attempting to contact Tenant and without notice to: (1) survey or review the Property's condition and take photographs to document the condition; (2) make emergency repairs; (3) exercise a contractual or statutory lien; (4) leave written notices; or (5) seize nonexempt property if Tenant is in default.
- C. Trip Charges: If Landlord or Landlord's agents have made prior arrangements with Tenant to access the Property and are denied or are not able to access the Property because of Tenant's failure to make the Property accessible (including, but not limited to, any occupant, guest or invitee of Tenant, pet, or security device prohibiting access to any area of the Property), Landlord may charge Tenant a trip charge of \$____.
- D. Keybox: A keybox is a locked container placed on the Property holding a key to the Property. The keybox is opened by a special combination, key, or programmed access device so that persons with the access device may enter the Property, even in Tenant's absence. The keybox is a

convenience but involves risk (such as unauthorized entry, theft, property damage, or personal injury). Neither the Association of REALTORS® nor MLS requires the use of a keybox.

- (1) Tenant authorizes Landlord, Landlord's property manager, and Landlord's broker to place on the Property a keybox containing a key to the Property:
 - (a) during the last _____ days of this lease or any renewal or extension; and
 - (b) at any time Landlord lists the Property for sale with a Texas licensed broker.
- (2) Tenant may withdraw Tenant's authorization to place a keybox on the Property by providing written notice to Landlord and paying Landlord a fee of \$_____ as consideration for the withdrawal. Landlord will remove the keybox within a reasonable time after receipt of the notice of withdrawal and payment of the required fee. Removal of the keybox does not alleviate Tenant's obligation to make the Property available for showings as indicated in Paragraph 14B.
- (3) If Landlord or Landlord's agents are denied or are not able to access the Property after first attempting to contact Tenant, Landlord may charge Tenant a trip charge as provided in Paragraph 14C.
- (4) Landlord, the property manager, and Landlord's broker are not responsible to Tenant, Tenant's guests, family, or occupants for any damages, injuries, or losses arising from use of the keybox unless caused by Landlord, the property manager, or Landlord's broker.

15. MOVE-IN CONDITION:

- A. Landlord makes no express or implied warranties as to the Property's condition. Tenant has inspected the Property and accepts it **AS-IS** provided that Landlord: _____

_____.
- B. Tenant will complete an Inventory and Condition Form, noting any damages to the Property, and deliver it to Landlord within _____ days after the Commencement Date. If Tenant fails to timely deliver the Inventory and Condition Form, the Property will be deemed to be free of damages, unless otherwise expressed in this lease. The Inventory and Condition Form is not a request for repairs. Tenant must direct all requests for repairs in compliance with Paragraph 18.

16. MOVE-OUT:

- A. Move-Out Condition: When this lease ends, Tenant will surrender the Property in the same condition as when received, normal wear and tear excepted. Tenant will leave the Property in a clean condition free of all trash, debris, and any personal property. Tenant may not abandon the Property.
- B. Definitions:
 - (1) "*Normal wear and tear*" means deterioration that occurs without negligence, carelessness, accident, or abuse.
 - (2) "*Surrender*" occurs when all occupants have vacated the Property, in Landlord's reasonable judgment, and one of the following events occurs:
 - (a) the date Tenant specifies as the move-out or termination date in a written notice to Landlord has passed; or
 - (b) Tenant returns keys and access devices that Landlord provided to Tenant under this lease.

- (3) "*Abandonment*" occurs when all of the following occur:
- (a) all occupants have vacated the Property, in Landlord's reasonable judgment;
 - (b) Tenant is in breach of this lease by not timely paying rent; and
 - (c) Landlord has delivered written notice to Tenant, by affixing it to the inside of the main entry door or if the Landlord is prevented from entering the Property by affixing it to the outside of the main entry door, stating that Landlord considers the Property abandoned, and Tenant fails to respond to the affixed notice by the time required in the notice, which will not be less than 2 days from the date the notice is affixed to the main entry door.

C. Personal Property Left After Move-Out:

- (1) If Tenant leaves any personal property in the Property after surrendering or abandoning the Property Landlord may:
 - (a) dispose of such personal property in the trash or a landfill;
 - (b) give such personal property to a charitable organization; or
 - (c) store and sell such personal property by following procedures in §54.045(b)-(e), Property Code.
- (2) Tenant must reimburse Landlord all Landlord's reasonable costs under Paragraph 16C(1) for packing, removing, storing, and selling the personal property left in the Property after surrender or abandonment.

17. PROPERTY MAINTENANCE:

A. Tenant's General Responsibilities: Tenant, at Tenant's expense, must:

- (1) keep the Property clean and sanitary;
- (2) promptly dispose of all garbage in appropriate receptacles;
- (3) supply and change heating and air conditioning filters at least once a month;
- (4) supply and replace all light bulbs, fluorescent tubes, and batteries for smoke alarms, carbon monoxide detectors, garage door openers, ceiling fan remotes, and other devices (of the same type and quality that are in the Property on the Commencement Date);
- (5) maintain appropriate levels of necessary chemicals or matter in any water softener;
- (6) take action to promptly eliminate any dangerous condition on the Property;
- (7) take all necessary precautions to prevent broken water pipes due to freezing or other causes;
- (8) replace any lost or misplaced keys;
- (9) pay any periodic, preventive, or additional extermination costs desired by Tenant, including treatment for bed bugs, unless otherwise required by law;
- (10) remove any standing water;
- (11) know the location and operation of the main water cut-off valve and all electric breakers and how to switch the valve or breakers off at appropriate times to mitigate any potential damage;
- (12) water the foundation of the Property at reasonable and appropriate times; and
- (13) promptly notify Landlord, in writing, of all needed repairs.

B. Yard Maintenance:

- (1) "*Yard*" means all lawns, shrubbery, bushes, flowers, gardens, trees, rock or other landscaping, and other foliage on or encroaching on the Property or on any easement appurtenant to the Property, and does not include common areas maintained by an owners' association.

(2) "Maintain the yard" means to perform activities such as, but not limited to: (a) mowing, fertilizing, and trimming the yard; (b) controlling pests and weeds in the yard; and (c) removing debris from the yard.

(3) Unless prohibited by ordinance or other law, Tenant will water the yard at reasonable and appropriate times including but not limited to the following times: _____

_____. Other than watering, the yard will be maintained as follows:

☐ (a) Landlord, at Landlord's expense, will maintain the yard. Tenant will permit Landlord and Landlord's contractors reasonable access to the yard and will remove any pet from the yard at appropriate times.

☐ (b) Tenant, at Tenant's expense, will maintain the yard.

☐ (c) Tenant will maintain in effect a scheduled yard maintenance contract with: ☐ a contractor who regularly provides such service; ☐ _____.

C. Pool/Spa Maintenance: Any pool or spa on the Property will be maintained according to a Pool/Spa Maintenance Addendum.

D. Prohibitions: If Tenant installs any fixtures on the Property, authorized or unauthorized, such as additional smoke alarms, additional carbon monoxide detectors, locks, alarm systems, cables, satellite dishes, or other fixtures, such fixtures will become the property of the Landlord. Except as otherwise permitted by law, this lease, or in writing by Landlord, Tenant may not:

- (1) remove any part of the Property or any of Landlord's personal property from the Property;
- (2) remove, change, add, or rekey any lock;
- (3) make holes in the woodwork, floors, or walls, except that a reasonable number of small nails may be used to hang pictures in sheetrock and grooves in paneling;
- (4) permit any water furniture on the Property;
- (5) install additional phone or video cables, outlets, antennas, satellite receivers, or alarm systems;
- (6) alter, replace or remove flooring material, paint, or wallpaper;
- (7) install, change, or remove any: fixture, appliance, or non-real-property item listed in Paragraph 2;
- (8) keep or permit any hazardous material on the Property such as flammable or explosive materials;
- (9) keep or permit any material or item which causes any liability or fire and extended insurance coverage to be suspended or canceled or any premiums to be increased;
- (10) dispose of any environmentally detrimental substance (for example, motor oil or radiator fluid) on the Property;
- (11) cause or allow any lien to be filed against any portion of the Property; or
- (12) disconnect or intentionally damage any carbon monoxide detector, or otherwise violate any local ordinance requiring a carbon monoxide detector in the Property.

E. Failure to Maintain: If Tenant fails to comply with this Paragraph 17 or any Pool/Spa Maintenance Addendum, Landlord may, in addition to exercising Landlord's remedies under Paragraph 27, perform whatever action Tenant is obligated to perform and Tenant must immediately reimburse Landlord the reasonable expenses that Landlord incurs plus any administrative fees assessed by Landlord's agents or any other entity as provided by law.

F. Smoking: Smoking by Tenant, Tenant's guests, family, or occupants is ☐ permitted ☐ not permitted on the Property (including, but not limited to, the garage or outdoor areas of the Property). If smoking is not permitted and does occur on the Property, Tenant will be in default and:

- (1) Landlord may exercise Landlord's remedies under Paragraph 27; and
- (2) Landlord may deduct from the security deposit damages to the Property caused by smoking, including but not limited to stains, burns, odors, and removal of debris.

18. REPAIRS: (Notice: Subchapter B, Chapter 92, Property Code governs repair obligations).

- A. Repair Requests:** All requests for repairs must be in writing and delivered to Landlord. If Tenant is delinquent in rent at the time a repair notice is given, Landlord is not obligated to make the repair. In the event of an emergency related to the condition of the Property that materially affects the physical health or safety of an ordinary tenant, Tenant may call Landlord or, if applicable, the property manager, at _____. Ordinarily, a repair to the heating and air conditioning system is not an emergency.
- B. NOTICE:** If Landlord fails to repair a condition that materially affects the physical health or safety of an ordinary tenant as required by this lease or the Property Code, Tenant may be entitled to exercise remedies under §92.056 and §92.0561 of the Property Code. If Tenant follows the procedures under those sections, the following remedies may be available to Tenant: (1) terminate the lease and obtain an appropriate refund under §92.056(f); (2) have the condition repaired or remedied according to §92.0561; (3) deduct from the rent the cost of the repair or remedy according to §92.0561; and (4) obtain judicial remedies according to §92.0563. Do not exercise these remedies without consulting an attorney or carefully reviewing the procedures under the applicable sections. The Property Code presumes that 7 days is a reasonable period of time for the Landlord to make a diligent effort to repair a condition unless there are circumstances which establish that a different period of time is appropriate (such as the severity and nature of the condition and the availability of materials, labor, and utilities). Failure to strictly follow the procedures in the applicable sections may cause Tenant to be in default of the lease.
- C. Completion of Repairs:**
- (1) Tenant may not repair or cause to be repaired any condition, regardless of the cause, without Landlord's permission. All decisions regarding repairs, including the completion of any repair, whether to repair or replace the item, and the selection of contractors, will be at Landlord's sole discretion.
 - (2) Landlord is not obligated to complete a repair on a day other than a business day unless required to do so by the Property Code.
- D. Payment of Repair Costs:**
- (1) Except as otherwise specified in this lease, Landlord will pay to repair or remedy conditions in the Property in need of repair if Tenant complies with the procedures for requesting repairs as described in this Paragraph 18. This includes, but is not limited to, repairs to the following items not caused by Tenant or Tenant's negligence:
 - (a) heating and air conditioning systems;
 - (b) water heaters; or
 - (c) water penetration from structural defects.
 - (2) Landlord will NOT pay to repair the following items unless caused by Landlord's negligence:
 - (a) conditions caused by Tenant, an Occupant, or any guest or invitee of Tenant;
 - (b) damage to doors, windows, and screens;
 - (c) damage from windows or doors left open;
 - (d) damage from wastewater stoppages caused by foreign or improper objects in lines that exclusively serve the Property;

(e) items that are cosmetic in nature with no impact on the functionality or use of the item; and

(f) the following specific items or appliances: _____

_____.

E. **Trip Charges:** If a repair person is unable to access the Property after making arrangements with Tenant to complete the repair, Tenant will pay any trip charge the repair person may charge, which amount may be different from the amount stated in Paragraph 14C.

F. **Advance Payments and Reimbursements:** Landlord may require advance payment of repairs or payments under this Paragraph 18 for which Tenant is responsible. Tenant must promptly reimburse Landlord the amounts under this Paragraph 18 for which Tenant is responsible.

19. SECURITY DEVICES AND EXTERIOR DOOR LOCKS:

A. Subchapter D, Chapter 92, Property Code requires the Property to be equipped with certain types of locks and security devices, including (with some exceptions): (1) window latches on each window; (2) a keyed doorknob lock or keyed deadbolt lock on each exterior door; (3) a sliding door pin lock on each exterior sliding glass door of the dwelling; (4) a sliding door handle latch or a sliding door security bar on each exterior sliding glass door of the dwelling; and (5) a keyless bolting device and a door viewer on each exterior door of the dwelling. Landlord has rekeyed the security devices since the last occupant vacated the Property or will rekey the security devices within 7 days after Tenant moves in. "Security device" has the meaning assigned to that term in §92.151, Property Code.

B. All notices or requests by Tenant for rekeying, changing, installing, repairing, or replacing security devices must be in writing. Installation of additional security devices or additional rekeying or replacement of security devices desired by Tenant may be paid by Tenant in advance in accordance with §92.162(c), Property Code, and may be installed only by contractors authorized by Landlord.

C. If Tenant vacates the Property in breach of this lease, Landlord may deduct from the security deposit reasonable costs incurred by Landlord to rekey security devices as authorized by §92.156(e), Property Code.

20. SMOKE ALARMS: Subchapter F, Chapter 92, Property Code requires the Property to be equipped with smoke alarms in certain locations. Requests for additional installation, inspection, or repair of smoke alarms must be in writing. Disconnecting or intentionally damaging a smoke alarm or removing a battery without immediately replacing it with a working battery may subject Tenant to civil penalties and liability for damages and attorney fees under §92.2611, Property Code.

21. LIABILITY: Unless caused by Landlord, Landlord is not responsible to Tenant, Tenant's guests, family, or occupants for any damages, injuries, or losses to person or property caused by fire, flood, water leaks, ice, snow, hail, winds, explosion, smoke, interruption of utilities, theft, burglary, robbery, assault, vandalism, other persons, condition of the Property, environmental contaminants (for example, carbon monoxide, asbestos, radon, lead-based paint, mold, fungus, etc.), or other occurrences or casualty losses. Unless prohibited by law, Tenant will promptly reimburse Landlord for any damages, injuries, or losses to person or property caused by Tenant, Tenant's guests, any occupants, or any pets or assistance animals, including cost of repairs or service to the Property.

22. HOLDOVER: If Tenant fails to vacate the Property at the time this lease ends Tenant will pay Landlord rent for the holdover period and indemnify Landlord and prospective tenants for damages, including but not limited to lost rent, lodging expenses, costs of eviction, and attorneys' fees. Rent for any holdover

period will be three (3) times the monthly rent, calculated on a daily basis, and will be immediately due and payable daily without notice or demand.

23. RESIDENTIAL LANDLORD'S LIEN: Landlord will have a lien for unpaid rent against all of Tenant's nonexempt personal property that is in the Property and may seize such nonexempt property if Tenant fails to pay rent. Subchapter C, Chapter 54, Property Code governs the rights and obligations of the parties regarding Landlord's lien. Landlord may collect a charge for packing, removing, or storing property seized in addition to any other amounts Landlord is entitled to receive. Landlord may sell or dispose of any seized property in accordance with the provisions of §54.045, Property Code.

24. SUBORDINATION: This lease and Tenant's leasehold interest are and will be subject, subordinate, and inferior to: (i) any lien or encumbrance now or later placed on the Property by Landlord; (ii) all advances made under any such lien or encumbrance; (iii) the interest payable on any such lien or encumbrance; (iv) any and all renewals and extensions of any such lien or encumbrance; (v) any restrictive covenant; and (vi) the rights of any owners' association affecting the Property.

25. CASUALTY LOSS OR CONDEMNATION: Section 92.054, Property Code governs the rights and obligations of the parties regarding a casualty loss to the Property. Any proceeds, payment for damages, settlements, awards, or other sums paid because of a casualty loss to the Property will be Landlord's sole property. For the purpose of this lease, any condemnation of all or a part of the Property is a casualty loss.

26. SPECIAL PROVISIONS: *(Do not insert a lease-option or lease-purchase clause without the assistance of legal counsel. Special obligations and liabilities under statute apply to such transactions.)*

27. DEFAULT:

- A. If Landlord fails to comply with this lease, Tenant may seek any relief provided by law.
- B. If Tenant fails to timely pay all amounts due under this lease or otherwise fails to comply with this lease, Tenant will be in default and:
 - (1) Landlord may terminate Tenant's right to occupy the Property by providing Tenant with at least one day written notice to vacate;
 - (2) all unpaid rents which are payable during the remainder of this lease or any renewal period will be accelerated without notice or demand;
 - (3) Landlord may exercise Landlord's lien under Paragraph 23 and any other rights under this lease or the Property Code; and
 - (4) Tenant will be liable for:
 - (a) any lost rent;
 - (b) Landlord's cost of reletting the Property including but not limited to leasing fees, advertising fees, utility charges, and other fees reasonably necessary to relet the Property;
 - (c) repairs to the Property for use beyond normal wear and tear;
 - (d) all Landlord's costs associated with eviction of Tenant, including but not limited to attorney's fees, court costs, costs of service, witness fees, and prejudgment interest;
 - (e) all Landlord's costs associated with collection of amounts due under this lease, including but not limited to collection fees, late charges, and returned check charges; and

(f) any other recovery to which Landlord may be entitled by law.

- C. Notice to vacate under Paragraph 27B(1) may be by any means permitted by §24.005, Property Code.
- D. If Tenant vacates the Property in breach of this lease, Landlord may also deduct from the security deposit the reasonable costs to rekey certain security devices, as provided in Paragraph 19.
- E. Landlord will attempt to mitigate any damage or loss caused by Tenant's breach by attempting to relet the Property to acceptable tenants and reducing Tenant's liability accordingly.

28. EARLY TERMINATION: This lease begins on the Commencement Date and ends on the Expiration date unless: (i) renewed under Paragraph 4; (ii) extended by written agreement of the parties; or (iii) terminated earlier under Paragraph 27, by agreement of the parties, applicable law, or this Paragraph 28. Unless otherwise provided by law, Tenant is not entitled to early termination due to voluntary or involuntary job or school transfer, changes in marital status, loss of employment, loss of co-tenants, changes in health, purchase of property, or death.

A. Special Statutory Rights Tenants may have special statutory rights to terminate the lease early in certain situations involving family violence, military deployment or transfer, or certain sex offenses or stalking.

- (1) Military: If Tenant is or becomes a servicemember or a dependent of a servicemember, Tenant may terminate this lease by delivering to Landlord a written notice of termination and a copy of an appropriate government document providing evidence of: (a) entrance into military service; (b) military orders for a permanent change of station (PCS); or (c) military orders to deploy with a military unit for not less than 90 days. Termination is effective on the 30th day after the first date on which the next rental payment is due after the date on which the notice is delivered. §92.017, Property Code governs the rights and obligations of the parties under this paragraph.
- (2) Family Violence: Tenant may terminate this lease if Tenant provides Landlord with a copy of ~~a court order~~ documentation described under §92.016, Property Code protecting Tenant or an occupant from family violence committed by a cotenant or occupant of the Property. §92.016, Property Code governs the rights and obligations of the parties under this paragraph. If the family violence is committed by someone other than a cotenant or co-occupant of the Property, Tenant must give written notice of termination 30 days prior to the effective date of the notice.
- (3) Sex Offenses or Stalking: Tenant may have special statutory rights to terminate this lease in certain situations involving certain sexual offenses or stalking, if the Tenant provides Landlord with the documentation required by §92.0161, Property Code. For more information about the types of situations covered by this provision, Tenant is advised to review §92.0161, Property Code.

B. Assignment, Subletting and Replacement Tenants:

- (1) Tenant may not assign this lease or sublet the Property without Landlord's written consent.
- (2) If Tenant requests an early termination of this lease under this Paragraph 28B, Tenant may attempt to find a replacement tenant and may request Landlord to do the same. Landlord may, but is not obligated to, attempt to find a replacement tenant under this paragraph.
- (3) Any assignee, subtenant, or replacement tenant must, in Landlord's discretion, be acceptable as a tenant and must sign: (a) a new lease with terms not less favorable to Landlord than this lease or otherwise acceptable to Landlord; (b) a sublease with terms approved by Landlord; or (c) an assignment of this lease in a form approved by Landlord.

- (4) At the time Landlord agrees to permit an assignee, subtenant, or replacement tenant to occupy the Property, Tenant will pay Landlord:
- (a) if Tenant procures the assignee, subtenant, or replacement tenant:
- ☐ (i) \$ _____.
- ☐ (ii) _____% of one's month rent that the assignee, subtenant, or replacement tenant is to pay.
- (b) if Landlord procures the assignee, subtenant, or replacement tenant:
- ☐ (i) \$ _____.
- ☐ (ii) _____% of one's month rent that the assignee, subtenant, or replacement tenant is to pay.
- (5) Unless expressly stated otherwise in an assignment or sublease, Tenant will not be released from Tenant's obligations under this lease because of an assignment or sublease. An assignment of this lease or a sublease of this lease without Landlord's written consent is voidable by Landlord.

29. ATTORNEY'S FEES: Any person who is a prevailing party in any legal proceeding brought under or related to the transaction described in this lease is entitled to recover prejudgment interest, attorney's fees, costs of service, and all other costs of the legal proceeding from the non-prevailing party.

30. REPRESENTATIONS: Tenant's statements in this lease and any application for rental are material representations. Each party to this lease represents that he or she is of legal age to enter into a contract. If Tenant makes a misrepresentation in this lease or in an application for rental, Tenant is in default.

31. ADDENDA: Incorporated into this lease are the following addenda, exhibits and other information. If Landlord's Rules and Regulations are made part of this lease, Tenant agrees to comply with the Rules and Regulations as Landlord may, at Landlord's discretion, amend from time to time.

- | | |
|--|---|
| <input type="checkbox"/> Addendum Regarding Lead-Based Paint | <input type="checkbox"/> Agreement Between Brokers |
| <input type="checkbox"/> Inventory & Condition Form | <input type="checkbox"/> Landlord's Rules & Regulations |
| <input type="checkbox"/> Landlord's Additional Parking Rules | <input type="checkbox"/> Owners' Association Rules |
| <input type="checkbox"/> Pet Agreement | <input type="checkbox"/> Pool/Spa Maintenance Addendum |
| <input type="checkbox"/> Protecting Your Home from Mold | <input type="checkbox"/> Residential Lease Application |
| <input type="checkbox"/> Residential Lease Guaranty | <input type="checkbox"/> Bed Bug Addendum |
| <input type="checkbox"/> _____ | <input type="checkbox"/> _____ |
| <input type="checkbox"/> _____ | <input type="checkbox"/> _____ |

32. NOTICES: All notices under this lease must be in writing and are effective when hand-delivered, sent by mail, or sent by electronic transmission to (Do not insert an e-mail address or a fax number unless the party consents to receive notices under this lease at the e-mail address or fax number specified.):

Tenant at the Property and a copy to:

Landlord c/o:

E-mail: _____

E-mail: _____

Fax: _____

Fax: _____

33. AGREEMENT OF PARTIES:

- A. Entire Agreement: There are no oral agreements between Landlord and Tenant. This lease contains the entire agreement between Landlord and Tenant and may not be changed except by written agreement.

- B. Binding Effect: This lease is binding upon and inures to the benefit of the parties to this lease and their respective heirs, executors, administrators, successors, and permitted assigns.
- C. Joint and Several: All Tenants are jointly and severally liable for all provisions of this lease. Any act or notice to, refund to, or signature of, any one or more of the Tenants regarding any term of this lease, its extension, its renewal, or its termination is binding on all Tenants executing this lease.
- D. Waiver: Landlord's past delay, waiver, or non-enforcement of a rental due date or any other right will not be deemed to be a waiver of any other breach by Tenant or any other right in this lease.
- E. Severable Clauses: Should a court find any clause in this lease unenforceable, the remainder of this lease will not be affected and all other provisions in this lease will remain enforceable.
- F. Controlling Law: The laws of the State of Texas govern the interpretation, validity, performance, and enforcement of this lease.
- G. Copyright: If an active REALTOR® member of Texas REALTORS® does not negotiate this lease as a party or for one of the parties, with or without assistance by an active member of the State Bar of Texas, this lease is voidable at will by Tenant.

34. INFORMATION:

- A. Future inquiries about this lease, rental payments, and security deposits should be directed to the person listed for receipt of notices for Landlord under Paragraph 32.
- B. It is Tenant's responsibility to determine, before signing this lease, if: (i) all services (e.g., utilities, connections, schools, and transportation) are accessible to or from the Property; (ii) such services are sufficient for Tenant's needs and wishes; and (iii) Tenant is satisfied with the Property's condition.
- C. The brokers to this lease have no knowledge of whether Landlord is delinquent in the payment of any lien against the Property.
- D. Unpaid rent and any unpaid amount under this lease are reportable to credit reporting agencies.
- E. Landlord is not obligated to respond to any requests for Tenant's rental and payment history from a mortgage company or other prospective landlord until Tenant has given notice of termination of this lease and Tenant is not in breach of this lease. (*Notice: Landlord or Landlord's agent may charge a reasonable fee for processing such information.*)
- F. If all occupants over 18 years of age die during this lease, Landlord may: (i) permit the person named below to access the Property at reasonable times in Landlord's or Landlord's agent's presence; (ii) permit the named person to remove Tenant's personal property; and (iii) refund the security deposit, less deductions, to the named person. Section 92.014, Property Code governs procedures to follow in the event of a tenant's death regarding a deceased tenant's personal property and security deposit.

Name: _____ Phone: _____

Address: _____

E-mail: _____

- G. 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 areas (see www.txdps.state.tx.us under on-

line services). For information concerning past criminal activity in certain areas, contact the local police department.

H. Landlord's insurance does not cover Tenant from loss of personal property. Landlord highly recommends that Tenant obtain liability insurance and insurance for casualties such as fire, flood, water damage, and theft.

I. Landlord's broker, _____,
☐ will ☐ will not act as the property manager for landlord. If Property is not managed by above-named broker, Property will be managed by ☐ Landlord or ☐ property manager for Landlord:
Name of property manager: _____ Phone: _____
Address: _____ E-mail: _____

J. This lease should not be used in conjunction with executory contracts of any type, such as contracts for deed, leases with options to purchase, or lease options, without the advice of an attorney.

K. **This lease is negotiable between the parties. This lease is binding upon final acceptance. READ IT CAREFULLY. If you do not understand the effect of this lease, consult your attorney BEFORE signing.**

Landlord _____ Date _____ Tenant _____ Date _____

Landlord _____ Date _____ Tenant _____ Date _____

Or signed for Landlord under written property management agreement or power of attorney:

Tenant _____ Date _____

By: _____ Date _____

Tenant _____ Date _____

Broker's Associate's Printed Name _____

Broker's Printed Name _____ License No. _____

Firm Name _____

For Landlord's Use:

On _____ * (date), Landlord provided a copy of the lease, signed by all parties, to _____ (Tenant) by ☐mail ☐e-mail ☐fax ☐in person.

Note: Landlord must provide at least one copy of the lease to at least one Tenant **no later than three business days after the date the lease is signed by each party to the lease. Additionally, if more than one tenant is a party to the lease, no later than three business days after the date the Landlord receives a written request for a copy of a lease from a tenant who has not already received one as required above, the Landlord must provide a copy to the requesting tenant. Landlord may provide the copy of the lease in: (1) a paper format; (2) an electronic format if requested by the tenant; or (3) by e-mail if the parties have communicated by e-mail regarding the lease. See § 92.024, Property Code, for more details.*



RESIDENTIAL LEASE FOR A MULTI-FAMILY PROPERTY UNIT

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS®, INC. IS NOT AUTHORIZED.
©Texas Association of REALTORS®, Inc. 2019⁹⁸

1. PARTIES: The parties to this lease are:

the owner of the Unit, Landlord,: _____;
_____ ; and
Tenant(s): _____.

2. PROPERTY: Landlord leases to Tenant the following Unit Number _____ located at:

Address: _____
in _____ County, Texas, together with the following non-real-property
items: _____.

The Unit and the non-real-property are collectively called the "Unit". "Property" refers to the real property on which the Unit is located including, but not limited to, the building and common areas.

3. TERM:

A. Primary Term: The primary term of this lease begins and ends as follows:

Commencement Date: _____ Expiration Date: _____

B. Delay of Occupancy: Tenant must occupy the Unit within 5 days after the Commencement Date. If Tenant is unable to occupy the Unit by the 5th day after the Commencement Date because of construction in the Unit or a prior tenant's holding over of the Unit, Tenant may terminate this lease by giving written notice to Landlord before the Unit becomes available to be occupied by Tenant, and Landlord will refund to Tenant the security deposit and any rent paid. Landlord will abate rent on a daily basis for a delay caused by construction or a prior tenant's holding over. This paragraph does not apply to any delay in occupancy caused by cleaning, repairs, or make-ready items.

4. AUTOMATIC RENEWAL AND NOTICE OF TERMINATION: This lease automatically renews on a month-to-month basis unless Landlord or Tenant provides the other party written notice of termination as provided in Paragraph 4A. Oral notice of termination is not sufficient under any circumstances. Time is of the essence for providing notice of termination (strict compliance with dates by which notice must be provided is required). The date on which rent is due does not apply to the requirement for providing written notice of termination. If a box is not checked under Paragraph 4A, Paragraph 4A(1) will apply. If a box is not checked under Paragraph 4B, Paragraph 4B(1) will apply.

A. This lease automatically renews on a month-to-month basis unless Landlord or Tenant provides the other party written notice of termination not less than: *(Check only one box.)*

- ☐ (1) 30 days before the Expiration Date.
☐ (2) _____ days before the Expiration Date.

If Landlord or Tenant fails to provide the other party timely written notice of termination as required by paragraph 4A, the lease automatically renews on a month-to-month basis. The Landlord or Tenant then must provide a subsequent written notice of termination as required by paragraph 4B.

B. If this lease automatically renews on a month-to-month basis, it will continue to renew on a month-to-month basis until either party provides written notice of termination to the other party and the notice of termination will be effective: *(Check only one box.)*

Residential Lease concerning: _____

- ☐ (1) on the last day of the month following the month in which the notice is given. Landlord is not obligated to prorate rent even if Tenant surrenders the Unit before the termination date.
- ☐ (2) on the date designated in the notice but not sooner than 30 days after the notice is given and, if necessary, rent will be prorated on a daily basis.

5. RENT:

- A. **Monthly Rent:** Tenant will pay Landlord monthly rent in the amount of \$_____ for each full month during this lease. The first full month's rent is due and payable not later than _____ by (select one or more): ☐ cashier's check ☐ electronic payment ☐ money order ☐ personal check or ☐ other means acceptable to Landlord.

Thereafter, Tenant will pay the monthly rent so that Landlord receives the monthly rent on or before (check only one box):

- ☐ (1) the first day of each month during this lease.
- ☐ (2) _____.

Weekends, holidays, and mail delays do not excuse Tenant's obligation to timely pay rent.

- B. **Prorated Rent:** On or before _____ Tenant will pay Landlord \$_____ as prorated rent from the Commencement Date through the last day of the month in which this lease begins.

- C. **Place of Payment:** Unless this lease provides otherwise, Tenant will remit all amounts due to Landlord under this lease to the following person or entity at the place stated and make all payments payable to the named person or entity. Landlord may later designate, in writing, another person or place to which Tenant must remit amounts due under this lease.

Name: _____

Address: _____

Notice: Place the address, Unit number and Tenant's name on all payments.

- D. **Method of Payment:**

- (1) Tenant must pay all rent timely and without demand, deduction, or offset, except as permitted by law or this lease.
- (2) Time is of the essence for the payment of rent (strict compliance with rental due dates is required).
- (3) Unless the parties agree otherwise, Tenant may not pay rent in cash and will pay all rent by (select one or more):
 - ☐ cashier's check ☐ electronic payment ☐ money order ☐ personal check or ☐ other means acceptable to Landlord. Landlord ☐ may or ☐ may not charge a reasonable fee to process or accept payment by (select one or more only if Landlord indicates a reasonable fee may be charged): ☐ cashier's check ☐ electronic payment ☐ money order ☐ personal check or ☐ other means acceptable to Landlord.
- (4) Landlord ☐ requires ☐ does not require Tenant(s) to pay monthly rents by one payment.
- (5) If Tenant fails to timely pay any amounts due under this lease or if any check of Tenant is not honored by the institution on which it was drawn, Landlord may require Tenant to pay such amount and any subsequent amounts under this lease in certified funds. This paragraph does not limit Landlord from seeking other remedies under this lease for Tenant's failure to make timely payments with good funds.

- E. **Rent Increases:** There will be no rent increases through the primary term. Landlord may increase the rent that will be paid during any month-to-month renewal period by providing at least 30 days written notice to Tenant.

6. LATE CHARGES:

A. If Landlord does not actually receive a rent payment in the full amount at the designated place of payment by the _____ day of each month at 11:59p, Tenant will pay Landlord for each late payment:

(1) an initial late charge equal to (check one box only): ☐ (a) \$_____; or ☐ (b) _____% of one month's rent; **and**

(2) additional late charges of \$_____ per day thereafter until rent and late charges are paid in full. Additional late charges for any one payment may not exceed more than 30 days.

§92.019, Property Code prohibits assessing a late fee until rent has remained unpaid for at least one-two full days after the date on which the rent is due.

B. For the purposes of paying rent and any late charges, the mailbox is not the agent for receipt for Landlord (the postmark date is not the date Landlord receives the payment). The parties agree that the late charge is ~~based on a reasonable estimate of~~ based on uncertain damages to the Landlord ~~that are incapable of precise calculation and result from~~ related to the late payment of rent, including direct or indirect expenses, direct or indirect costs, or overhead associated with the collection of late payment. Landlord's acceptance of a late charge does not waive Landlord's right to exercise remedies under Paragraph 27.

7. **RETURNED PAYMENT:** Tenant will pay Landlord \$_____ for each payment Tenant tenders to Landlord which is returned or not honored by the institution on which it is drawn for any reason, plus any late charges until Landlord receives payment. Tenant must ~~make~~ any returned payment good by paying such amount(s) plus any associated charges in certified funds.

8. **APPLICATION OF FUNDS:** Regardless of any notation on a check, Landlord may apply funds received from Tenant first to any non-rent obligations of Tenant, including but not limited to, late charges, returned payment charges, repairs, brokerage fees, periodic utilities, pet charges, and then to rent.

9. PETS:

A. Unless the parties agree ~~otherwise in writing,~~ Tenant may not permit, even temporarily, any pet in the Unit (including but not limited to any mammal, ~~reptile~~, bird, fish, rodent, or insect). An assistance animal is not considered a pet.

B. If Tenant violates this Paragraph 9 or any agreement to keep a pet in the Unit, Landlord may take all or any of the following action:

- (1) declare Tenant to be in default of this lease and exercise Landlord's remedies under Paragraph 27;
- (2) charge Tenant, as additional rent, an initial amount of \$___ and \$_____ per day thereafter per pet for each day Tenant violates the pet restrictions;
- (3) remove or cause to be removed any unauthorized pet and deliver it to appropriate local authorities by providing at least 24-hour written notice to Tenant of Landlord's intention to remove the unauthorized pet; and
- (4) charge to Tenant the Landlord's cost to:
 - (a) remove any unauthorized pet;
 - (b) exterminate the Unit for fleas and other insects;
 - (c) clean and deodorize the Unit's carpets and drapes; and
 - (d) repair any damage to the Unit caused by the unauthorized pet.

C. When taking any action under Paragraph 9B Landlord will not be liable for any harm, injury, death, or sickness to any pet.

10. SECURITY DEPOSIT:

- A. **Security Deposit:** On or before execution of this lease, Tenant will pay a security deposit to Landlord in the amount of \$_____ by (select one or more): ☐ cashier's check ☐ electronic payment ☐ money order ☐ personal check or ☐ other means acceptable to Landlord. "Security deposit" has the meaning assigned to that term in §92.102, Property Code. Any additional deposits Tenant pays to Landlord, other than the security deposit, will become part of the security deposit.
- B. **Interest:** No interest or income will be paid to Tenant on the security deposit. Landlord may place the security deposit in an interest-bearing or income-producing account and any interest or income earned will be paid to Landlord or Landlord's representative.
- C. **Refund:** Tenant must give Landlord at least thirty (30) days written notice of surrender before Landlord is obligated to account for or refund the security deposit. Any refund of the security deposit will be made payable to all Tenants named in this lease.

Notices about Security Deposits:

- (1) **§92.108, Property Code provides that a tenant may not withhold payment of any portion of the last month's rent on grounds that the security deposit is security for unpaid rent.**
- (2) **Bad faith violations of §92.108 may subject a tenant to liability up to 3 times the rent wrongfully withheld and the landlord's reasonable attorney's fees.**
- (3) **The Property Code does not obligate a landlord to return or account for the security deposit until the tenant surrenders the Unit and gives the landlord a written statement of the tenant's forwarding address, after which the landlord has 30 days in which to account.**
- (4) **"Surrender" is defined in Paragraph 16 of this lease.**
- (5) **One may view the Texas Property Code at the Texas Legislature's website which, as of the date shown in the lower left-hand corner of this form, is <http://www.statutes.legis.state.tx.us/>.**

D. Deductions:

- (1) Landlord may deduct reasonable charges from the security deposit for:
- (a) damages to the Unit and Property, excluding normal wear and tear, and all reasonable costs associated to repair the Unit and Property;
 - (b) costs for which Tenant is responsible to clean, deodorize, exterminate, and maintain the Unit;
 - (c) unpaid or accelerated rent;
 - (d) unpaid late charges;
 - (e) unpaid utilities and utility expenses Landlord incurs to maintain utilities to the Unit as required by this Lease;
 - (f) unpaid pet charges;
 - (g) replacing unreturned keys, garage door openers, security devices, or other components;
 - (h) the removal of unauthorized locks or fixtures installed by Tenant;
 - (i) Landlord's cost to access the Unit if made inaccessible by Tenant;
 - (j) missing or burned-out light bulbs and fluorescent tubes (at the same location and of the same type and quality that are in the Unit on the Commencement Date);
 - (k) packing, removing, and storing abandoned property;
 - (l) removing abandoned or illegally parked vehicles;
 - (m) costs of reletting (as defined in Paragraph 27), if Tenant is in default;
 - (n) attorney's fees, costs of court, costs of service, and other reasonable costs incurred in any legal proceeding against Tenant;
 - (o) mailing costs associated with sending notices to Tenant for any violations of this lease;

- (p) any other unpaid charges or fees or other items for which Tenant is responsible under this lease;
- (q) cost to restore walls, flooring, landscaping or any alteration to the Property not approved in writing by Landlord;
- (r) damages to the Unit and Property caused by smoking, including but not limited to stains, burns, odors, and removal of debris; and
- (s) costs to rekey certain security devices, as provided in Paragraph 19.

(2) If deductions exceed the security deposit, Tenant will pay to Landlord the excess within 10 days after Landlord makes written demand.

11. UTILITIES:

- A. Tenant will pay all connection fees, service fees, usage fees, and all other costs and fees for all utilities to the Unit (for example, electricity, gas, water, wastewater, garbage, telephone, alarm monitoring systems, cable, and Internet connections) except the following which Landlord will pay: _____

Unless otherwise agreed, amounts under this paragraph are payable directly to the service providers.

- B. Unless provided by Landlord, Tenant must, at a minimum, keep the following utilities on, if available, at all times this lease is in effect: gas; electricity; water; wastewater; and garbage services.
- C. Tenant authorizes all utility service providers to release to Landlord information concerning connections, disconnections, and charges.

Notice: Before signing this lease, Tenant should determine if all necessary utilities are available to the Unit and are adequate for Tenant's use.

12. USE AND OCCUPANCY:

- A. Occupants: Tenant may use the Unit as a private residence only. The only persons Tenant may permit to reside in the Unit during the term of this lease are (include names and ages of all occupants): _____

- B. Phone Numbers: Tenant must promptly inform Landlord of any changes in Tenant's phone numbers (home, work, and mobile) not later than 5 days after a change.
- C. HOA Rules: Tenant must comply with any owners' association rules or restrictive covenants affecting the Property. Tenant will reimburse Landlord for any fines or other charges assessed against Landlord for violations by Tenant of any owners' association rule or restrictive covenant, and any resulting administrative fees assessed by Landlord's agents or any other entity as provided by law.
- D. Prohibitions: Unless otherwise authorized by this lease, Tenant may not install or permit any of the following in the Unit, even temporarily: a spa, hot tub, above-ground pool, trampoline, or any item which causes a suspension or cancellation of insurance coverage or an increase in insurance premiums. Tenant may not permit any part of the Unit to be used for: (1) any activity which is a nuisance, offensive, noisy, or dangerous; (2) the repair of any vehicle; (3) any business of any type, including but not limited to child care; (4) any activity which violates any zoning ordinance, owners' association rule, or restrictive covenant; (5) any illegal or unlawful activity; or (6) activity that obstructs, interferes with, or infringes on the rights of other persons near the Unit.

- E. Guests: Tenant may not permit any guest to stay in the Unit longer than the amount of time permitted by any owners' association rule or restrictive covenant or _____ days without Landlord's written permission, whichever is less.
- F. Common Areas: Landlord is not obligated to pay any non-mandatory or user fees for Tenant's use of any common areas or facilities (for example, pool or tennis courts). If Tenant uses any of the common areas, Tenant shall exercise reasonable care, not damage the common areas, and keep the common areas clean and sanitary.
- G. Property Rules: Landlord may adopt rules to maintain and enhance the safety and appearance of the Property. From time to time Landlord, at its discretion, may amend the rules. Tenant agrees to comply with the rules as they may be amended. Exceptions or waivers must be authorized by Landlord in writing.

13. PARKING RULES:

A. Parking Type:

- ☐ (1) Common Parking: Tenant may park no more than _____ vehicles (cars, motorcycles, and passenger trucks) on the Property in the common parking areas located on the Property.
- ☐ (2) Assigned Parking: Tenant's assigned parking areas are identified as follows: _____

Only one vehicle may be parked in each assigned parking space. Each month, on or before the date rent is due under the Lease, Tenant will pay additional rent of \$ _____ for the assigned parking. Tenant may not assign, sublet, or trade any assigned parking space or area.

- B. Tenant may not use any parking spaces or areas on the Property for any boat, trailer, recreational vehicle, all terrain vehicle, jet ski, or any other type of personal property.
- C. Tenant's guests, patrons or invitees may park only in those area designated by Landlord for Tenant's guests, patrons, or invitees.
- D. Landlord may, but is not obligated to, institute controlled-access systems to the parking areas, including but not limited to systems such as vehicle identification stickers, license numbers, or controlled-access devices. At the time the lease ends, Tenant must return all access devices to Landlord.
- E. In accordance with applicable state and local laws, the Landlord may tow, at Tenant's expense: (a) any inoperative vehicle on or adjacent to the Property; (b) any vehicle parked in violation of this paragraph or any additional parking rules made part of this lease; or (c) any vehicle parked in violation of any law, local ordinance, or owners' association rule.
- F. Tenant must promptly inform Landlord of any changes in Tenant's vehicle information (type, year, make, model, and license plate number including state) not later than 5 days after a change.

14. ACCESS BY LANDLORD:

- A. Advertising: Landlord may prominently display a "For Sale" or "For Lease" or similarly worded sign in the Unit during the term of this lease or any renewal period. Landlord or Landlord's contractor may take interior and exterior photographs or images of the Unit and use the photographs or images in any advertisements to lease or sell the Unit or Property.

- B. Access: Before accessing the Unit, Landlord or anyone authorized by Landlord will attempt to first contact Tenant, but may enter the Unit at reasonable times without notice to make repairs or to show the Unit to prospective tenants or buyers, inspectors, fire marshals, lenders, appraisers, or insurance agents. Additionally, Landlord or anyone authorized by Landlord may peacefully enter the Unit at reasonable times without first attempting to contact Tenant and without notice to: (1) survey or review the Unit's condition and take photographs to document the condition; (2) make emergency repairs; (3) exercise a contractual or statutory lien; (4) leave written notices; or (5) seize nonexempt property if Tenant is in default.
- C. Trip Charges: If Landlord or Landlord's agents have made prior arrangements with Tenant to access the Unit and are denied or are not able to access the Unit because of Tenant's failure to make the Unit accessible (including, but not limited to, any occupant, guest or invitee of Tenant, pet, or security device prohibiting access to any area within the Property), Landlord may charge Tenant a trip charge of \$_____.
- D. Keybox: **A keybox is a locked container placed on the Unit holding a key to the Unit. The keybox is opened by a special combination, key, or programmed access device so that persons with the access device may enter the Unit, even in Tenant's absence. The keybox is a convenience but involves risk (such as unauthorized entry, theft, property damage, or personal injury). Neither the Association of REALTORS® nor MLS requires the use of a keybox.**
- (1) Tenant authorizes Landlord, Landlord's property manager, and Landlord's broker to place a keybox near the Unit containing a key to the Unit:
 - (a) during the last _____ days of this lease or any renewal or extension; and
 - (b) at any time Landlord lists the Unit for sale with a Texas licensed broker.
 - (2) Tenant may withdraw Tenant's authorization to place a keybox near the Unit by providing written notice to Landlord and paying Landlord a fee of \$_____ as consideration for the withdrawal. Landlord will remove the keybox within a reasonable time after receipt of the notice of withdrawal and payment of the required fee. Removal of the keybox does not alleviate Tenant's obligation to make the Unit available for showings as stated in Paragraph 14B.
 - (3) If Landlord or Landlord's agents denied or are not able to access the Unit after first attempting to contact Tenant, Landlord may charge Tenant a trip charge as provided in Paragraph 14C.
 - (4) Landlord, the property manager, and Landlord's broker are not responsible to Tenant, Tenant's guests, family, or occupants for any damages, injuries, or losses arising from use of the keybox unless caused by Landlord, the property manager, or Landlord's broker.

15. MOVE-IN CONDITION:

- A. Landlord makes no express or implied warranties as to the Unit's or Property's condition. Tenant has inspected the Unit and Property and accepts the unit **AS-IS** provided that Landlord: _____
- B. Tenant will complete an Inventory and Condition Form, noting any damages to the Unit, and deliver it to Landlord within _____ days after the Commencement Date. If Tenant fails to timely deliver the Inventory and Condition Form, the Unit will be deemed to be free of damages, unless otherwise expressed in this lease. The Inventory and Condition Form is not a request for repairs. Tenant must direct all requests for repairs in compliance with Paragraph 18.

16. MOVE-OUT:

A. Move-Out Condition: When this lease ends, Tenant will surrender the Unit in the same condition as when received, normal wear and tear excepted. Tenant will leave the Unit in a clean condition free of all trash, debris, and any personal property. Tenant may not abandon the Unit.

B. Definitions:

- (1) "*Normal wear and tear*" means deterioration that occurs without negligence, carelessness, accident, or abuse.
- (2) "*Surrender*" occurs when all occupants have vacated the Unit, in Landlord's reasonable judgment, and one of the following events occurs:
 - (a) the date Tenant specifies as the move-out or termination date in a written notice to Landlord has passed; or
 - (b) Tenant returns keys and access devices that Landlord provided to Tenant under this lease.
- (3) "*Abandonment*" occurs when all of the following occur:
 - (a) all occupants have vacated the Unit, in Landlord's reasonable judgment;
 - (b) Tenant is in breach of this lease by not timely paying rent; and
 - (c) Landlord has delivered written notice to Tenant, by affixing it to the inside of the main entry door or if the Landlord is prevented from entering the Unit by affixing it to the outside of the main entry door, stating that Landlord considers the Unit abandoned, and Tenant fails to respond to the affixed notice by the time required in the notice, which will not be less than 2 days from the date the notice is affixed to the main entry door.

C. Personal Property Left After Move-Out:

- (1) If Tenant leaves any personal property in the Unit of Property after surrendering or abandoning the Unit Landlord may:
 - (a) dispose of such personal property in the trash or a landfill;
 - (b) give such personal property to a charitable organization; or
 - (c) store and sell such personal property by following procedures in §54.045(b)-(e), Property Code.
- (2) Tenant must reimburse Landlord all Landlord's reasonable costs under Paragraph 16C(1) for packing, removing, storing, and selling the personal property left in the Unit after surrender or abandonment.

17. UNIT AND PROPERTY MAINTENANCE:

A. Tenant's General Responsibilities: Tenant, at Tenant's expense, must:

- (1) keep the Unit clean and sanitary and use the Property only in ways that are sanitary, clean and non-disruptive;
- (2) promptly dispose of all garbage in appropriate receptacles;
- (3) supply and change heating and air conditioning filters at least once a month;
- (4) supply and replace all light bulbs, fluorescent tubes, and batteries for smoke alarms, carbon monoxide detectors, garage door openers, ceiling fan remotes, and other devices (of the same type and quality that are in the Unit on the Commencement Date);
- (5) maintain appropriate levels of necessary chemicals or matter in any water softener;
- (6) take action to promptly eliminate any dangerous condition in the Unit;
- (7) take all necessary precautions to prevent broken water pipes due to freezing or other causes;
- (8) replace any lost or misplaced keys;

- (9) pay any periodic, preventive, or additional extermination costs desired by Tenant, including treatment for bed bugs, except as required by law;
- (10) remove any standing water;
- (11) know the location and operation of the main water cut-off valve and all electric breakers to the Unit and how to switch the valve or breakers off at appropriate times to mitigate any potential damage; and
- (12) promptly notify Landlord, in writing, of all needed repairs.

B. Yard Maintenance:

- (1) "*Yard*" means all lawns, shrubbery, bushes, flowers, gardens, trees, rock or other landscaping, and other foliage on or encroaching on the Property or on any easement appurtenant to the Property, and does not include common areas maintained by an owners' association.
- (2) "*Maintain the yard*" means to perform activities such as, but not limited to: (a) mowing, fertilizing, and trimming the yard; (b) controlling pests and weeds in the yard; and (c) removing debris from the yard.
- (3) Unless prohibited by ordinance or other law, ☐ Tenant ☐ Landlord will water the yard at reasonable and appropriate times including but not limited to the following times: _____

_____. Other than watering, the yard will be maintained as follows:

- ☐ (a) Landlord, at Landlord's expense, will maintain the yard. Tenant will permit Landlord and Landlord's contractors reasonable access to the yard and will remove any pet from the yard at appropriate times.
- ☐ (b) Tenant, at Tenant's expense, will maintain the yard.
- ☐ (c) Tenant will maintain in effect a scheduled yard maintenance contract with: ☐ a contractor who regularly provides such service; ☐ _____.

C. Prohibitions: If Tenant installs any fixtures in the Unit, authorized or unauthorized, such as additional smoke alarms, additional carbon monoxide detectors, locks, alarm systems, cables, satellite dishes, or other fixtures, such fixtures will become the property of the Landlord. Except as otherwise permitted by law, this lease, or in writing by Landlord, Tenant may not:

- (1) remove any part of the Property or Unit or any of Landlord's personal property from the Unit or Property;
- (2) remove, change, add, or rekey any lock;
- (3) make holes in the woodwork, floors, or walls, except that a reasonable number of small nails may be used to hang pictures in sheetrock and grooves in paneling;
- (4) permit any water furniture in the Unit;
- (5) install additional phone or video cables, outlets, antennas, satellite receivers, or alarm systems;
- (6) alter, replace or remove flooring material, paint, or wallpaper;
- (7) install, change, or remove any: fixture, appliance, or non-real-property item listed in Paragraph 2;
- (8) keep or permit any hazardous material on the Property or in the Unit such as flammable or explosive materials;
- (9) keep or permit any material or item which causes any liability or fire and extended insurance coverage to be suspended or canceled or any premiums to be increased;
- (10) dispose of any environmentally detrimental substance (for example, motor oil or radiator fluid) on the Property or in the Unit;
- (11) cause or allow any lien to be filed against any portion of the Property; or

- (12) disconnect or intentionally damage any carbon monoxide detector, or otherwise violate any local ordinance requiring a carbon monoxide detector in the Unit.

D. Failure to Maintain: If Tenant fails to comply with this Paragraph 17 Landlord may, in addition to exercising Landlord's remedies under Paragraph 27, perform whatever action Tenant is obligated to perform and Tenant must immediately reimburse Landlord the reasonable expenses that Landlord incurs plus any administrative fees assessed by Landlord's agents or any other entity as provided by law.

D.E. Smoking: Smoking by Tenant, Tenant's guests, family, or occupants is ☐ permitted ☐ not permitted in the Unit or Property (including, but not limited to, the garage or outdoor areas of the Property). If smoking is not permitted and does occur in the Unit or Property, Tenant will be in default and:

- (1) Landlord may exercise Landlord's remedies under Paragraph 27; and
- (2) Landlord may deduct from the security deposit damages to the Unit or Property caused by smoking, including, but not limited to stains, burns, odors, and removal of debris.

18. REPAIRS: (Notice: Subchapter B, Chapter 92, Property Code governs repair obligations).

A. Repair Requests: All requests for repairs must be in writing and delivered to Landlord. If Tenant is delinquent in rent at the time a repair notice is given, Landlord is not obligated to make the repair. In the event of an emergency related to the condition of the Unit that materially affects the physical health or safety of an ordinary tenant, Tenant may call Landlord or, if applicable, the property manager, at _____. Ordinarily a repair to the heating and air conditioning system is not an emergency.

B. NOTICE: If Landlord fails to repair a condition that materially affects the physical health or safety of an ordinary tenant as required by this lease or the Property Code, Tenant may be entitled to exercise remedies under §92.056 and §92.0561 of the Property Code. If Tenant follows the procedures under those sections, the following remedies may be available to Tenant: (1) terminate the lease and obtain an appropriate refund under §92.056(f); (2) have the condition repaired or remedied according to §92.0561; (3) deduct from the rent the cost of the repair or remedy according to §92.0561; and (4) obtain judicial remedies according to §92.0563. Do not exercise these remedies without consulting an attorney or carefully reviewing the procedures under the applicable sections. The Property Code presumes that 7 days is a reasonable period of time for the Landlord to repair a condition unless there are circumstances which establish that a different period of time is appropriate (such as the severity and nature of the condition and the availability of materials, labor, and materials). Failure to strictly follow the procedures in the applicable sections may cause Tenant to be in default of the lease.

C. Completion of Repairs:

- (1) Tenant may not repair or cause to be repaired any condition, regardless of the cause, without Landlord's permission. All decisions regarding repairs, including the completion of any repair, whether to repair or replace the item, and the selection of contractors, will be at Landlord's sole discretion.
- (2) Landlord is not obligated to complete a repair on a day other than a business day unless required to do so by the Property Code.

D. Payment of Repair Costs:

- (1) Except as otherwise specified in this lease, Landlord will pay to repair or remedy conditions in the Unit in need of repair if Tenant complies with the procedures for requesting repairs as

described in this Paragraph 18. This includes, but is not limited to, repairs to the following items not caused by Tenant or Tenant's negligence:

- (a) heating and air conditioning systems;
- (b) water heaters; or
- (c) water penetration from structural defects.

(2) Landlord will NOT pay to repair the following items unless caused by Landlord's negligence:

- (a) conditions caused by Tenant, an Occupant, or any guest or invitee of Tenant;
- (b) damage to doors, windows, and screens;
- (c) damage from windows or doors left open;
- (d) damage from wastewater stoppages caused by foreign or improper objects in lines that exclusively serve the Unit;
- (e) items that are cosmetic in nature with no impact on the functionality or use of the item; and
- (f) the following specific items or appliances: _____

E. **Trip Charges:** If a repair person is unable to access the Unit after making arrangements with Tenant to complete the repair, Tenant will pay any trip charge the repair person may charge, which amount may be different from the amount stated in Paragraph 14C.

F. **Advance Payments and Reimbursements:** Landlord may require advance payment of repairs or payments under this Paragraph 18 for which Tenant is responsible. Tenant must promptly reimburse Landlord the amounts under this Paragraph 18 for which Tenant is responsible.

19. SECURITY DEVICES AND EXTERIOR DOOR LOCKS:

A. Subchapter D, Chapter 92, Property Code requires the Unit to be equipped with certain types of locks and security devices, including (with some exceptions): (1) window latches on each window; (2) a keyed doorknob lock or keyed deadbolt lock on each exterior door; (3) a sliding door pin lock on each exterior sliding glass door of the dwelling; (4) a sliding door handle latch or a sliding door security bar on each exterior sliding glass door of the dwelling; and (5) a keyless bolting device and a door viewer on each exterior door of the dwelling. Landlord has rekeyed the security devices since the last occupant vacated the Unit or will rekey the security devices within 7 days after Tenant moves in. "Security device" has the meaning assigned to that term in §92.151, Property Code.

B. All notices or requests by Tenant for rekeying, changing, installing, repairing, or replacing security devices must be in writing. Installation of additional security devices or additional rekeying or replacement of security devices desired by Tenant may be paid by Tenant in advance in accordance with §92.162(c), Property Code, and may be installed only by contractors authorized by Landlord.

C. If Tenant vacates the Unit in breach of this lease, Landlord may deduct from the security deposit reasonable costs incurred by Landlord to rekey security devices as authorized by §92.156(e), Property Code.

20. SMOKE ALARMS: Subchapter F, Chapter 92, Property Code requires the Unit to be equipped with smoke alarms in certain locations. Requests for additional installation, inspection, or repair of smoke alarms must be in writing. Disconnecting or intentionally damaging a smoke alarm or removing a battery without immediately replacing it with a working battery may subject Tenant to civil penalties and liability for damages and attorney fees under §92.2611, Property Code.

21. LIABILITY: Unless caused by Landlord, Landlord is not responsible to Tenant, Tenant's guests, family, or occupants for any damages, injuries, or losses to person or property caused by fire, flood, water leaks, ice,

Residential Lease concerning: _____

snow, hail, winds, explosion, smoke, interruption of utilities, theft, burglary, robbery, assault, vandalism, other persons, condition of the Property or Unit, environmental contaminants (for example, carbon monoxide, asbestos, radon, lead-based paint, mold, fungus, etc.), or other occurrences or casualty losses. Unless prohibited by law, Tenant will promptly reimburse Landlord for any damages, injuries, or losses to person or property caused by Tenant, Tenant's guests, any occupants, or any pets or assistance animals, including cost of repairs or service to the Property or Unit.

22. HOLDOVER: If Tenant fails to vacate the Unit at the time this lease ends Tenant will pay Landlord rent for the holdover period and indemnify Landlord and prospective tenants for damages, including but not limited to lost rent, lodging expenses, costs of eviction, and attorneys' fees. Rent for any holdover period will be three (3) times the monthly rent, calculated on a daily basis, and will be immediately due and payable daily without notice or demand.

23. RESIDENTIAL LANDLORD'S LIEN: Landlord will have a lien for unpaid rent against all of Tenant's nonexempt personal property that is in the Unit or on the Property and may seize such nonexempt property if Tenant fails to pay rent. Subchapter C, Chapter 54, Property Code governs the rights and obligations of the parties regarding Landlord's lien. Landlord may collect a charge for packing, removing, or storing property seized in addition to any other amounts Landlord is entitled to receive. Landlord may sell or dispose of any seized property in accordance with the provisions of §54.045, Property Code.

24. SUBORDINATION: This lease and Tenant's leasehold interest are and will be subject, subordinate, and inferior to: (i) any lien or encumbrance now or later placed on the Unit or Property by Landlord; (ii) all advances made under any such lien or encumbrance; (iii) the interest payable on any such lien or encumbrance; (iv) any and all renewals and extensions of any such lien or encumbrance; (v) any restrictive covenant; and (vi) the rights of any owners' association affecting the Unit or Property.

25. CASUALTY LOSS OR CONDEMNATION: Section 92.054, Property Code governs the rights and obligations of the parties regarding a casualty loss to the Unit and Property. Any proceeds, payment for damages, settlements, awards, or other sums paid because of a casualty loss to the Unit or Property will be Landlord's sole property. For the purpose of this lease, any condemnation of all or a part of the Unit is a casualty loss.

26. SPECIAL PROVISIONS: *(Do not insert a lease-option or lease-purchase clause without the assistance of legal counsel. Special obligations and liabilities under statute apply to such transactions.)*

27. DEFAULT:

- A. If Landlord fails to comply with this lease, Tenant may seek any relief provided by law.
- B. If Tenant fails to timely pay all amounts due under this lease or otherwise fails to comply with this lease, Tenant will be in default and:

- (1) Landlord may terminate Tenant's right to occupy the Unit by providing Tenant with at least one day written notice to vacate;
- (2) all unpaid rents which are payable during the remainder of this lease or any renewal period will be accelerated without notice or demand;
- (3) Landlord may exercise Landlord's lien under Paragraph 23 and any other rights under this lease or the Property Code; and
- (4) Tenant will be liable for:
 - (a) any lost rent;
 - (b) Landlord's cost of reletting the Unit including but not limited to leasing fees, advertising fees, utility charges, and other fees reasonably necessary to relet the Unit;
 - (c) repairs to the Unit for use beyond normal wear and tear;
 - (d) all Landlord's costs associated with eviction of Tenant, including but not limited to attorney's fees, court costs, costs of service, witness fees, and prejudgment interest;
 - (e) all Landlord's costs associated with collection of amounts due under this lease, including but not limited to collection fees, late charges, and returned check charges; and
 - (f) any other recovery to which Landlord may be entitled by law.

- C. Notice to vacate under Paragraph 27B(1) may be by any means permitted by §24.005, Property Code.
- D. If Tenant vacates the Unit in breach of this lease, Landlord may deduct from the security deposit the reasonable costs to rekey certain security devices, as provided in Paragraph 19.
- E. Landlord will attempt to mitigate any damage or loss caused by Tenant's breach by attempting to relet the Unit to acceptable tenants and reducing Tenant's liability accordingly.

28. EARLY TERMINATION: This lease begins on the Commencement Date and ends on the Expiration date unless: (i) renewed under Paragraph 4; (ii) extended by written agreement of the parties; or (iii) terminated earlier under Paragraph 27, by agreement of the parties, applicable law, or this Paragraph 28. Unless otherwise provided by law, Tenant is not entitled to early termination due to voluntary or involuntary job or school transfer, changes in marital status, loss of employment, loss of co-tenants, changes in health, purchase of property, or death.

- A. Special Statutory Rights: Tenants may have special statutory rights to terminate the lease early in certain situations involving family violence, military deployment or transfer, or certain sex offenses or stalking.

- (1) Military: If Tenant is or becomes a servicemember or a dependent of a servicemember, Tenant may terminate this lease by delivering to Landlord a written notice of termination and a copy of an appropriate government document providing evidence of: (a) entrance into military service; (b) military orders for a permanent change of station (PCS); or (c) military orders to deploy with a military unit for not less than 90 days. Termination is effective on the 30th day after the first date on which the next rental payment is due after the date on which the notice is delivered. Section 92.017, Property Code governs the rights and obligations of the parties under this paragraph.
- (2) Family Violence: Tenant may terminate this lease if Tenant provides Landlord with a copy of a court order—documentation described under §92.016, Property Code protecting Tenant or an occupant from family violence committed by a cotenant or occupant of the Unit. Section 92.016, Property Code governs the rights and obligations of the parties under this paragraph. If the family violence is committed by someone other than a cotenant or co-occupant of the Property, Tenant must give written notice of termination 30 days prior to the effective date of the notice.
- (3) Sex Offenses or Stalking: Tenant may have special statutory rights to terminate this lease in certain situations involving certain sexual offenses or stalking, if the Tenant provides Landlord with

the documentation required by §92.0161, Property Code. For more information about the types of situations covered by this provision, Tenant is advised to review §92.0161, Property Code.

B. Assignment, Subletting and Replacement Tenants:

- (1) Tenant may not assign this lease or sublet the Unit without Landlord's written consent.
- (2) If Tenant requests an early termination of this lease under this Paragraph 28B, Tenant may attempt to find a replacement tenant and may request Landlord to do the same. Landlord may, but is not obligated to, attempt to find a replacement tenant under this paragraph.
- (3) Any assignee, subtenant, or replacement tenant must, in Landlord's discretion, be acceptable as a tenant and must sign: (a) a new lease with terms not less favorable to Landlord than this lease or otherwise acceptable to Landlord; (b) a sublease with terms approved by Landlord; or (c) an assignment of this lease in a form approved by Landlord.
- (4) At the time Landlord agrees to permit an assignee, subtenant, or replacement tenant to occupy the Unit, Tenant will pay Landlord:
 - (a) if Tenant procures the assignee, subtenant, or replacement tenant:
 - ☐ (i) \$ _____.
 - ☐ (ii) _____% of one's month rent that the assignee, subtenant, or replacement tenant is to pay.
 - (b) if Landlord procures the assignee, subtenant, or replacement tenant:
 - ☐ (i) \$ _____.
 - ☐ (ii) _____% of one's month rent that the assignee, subtenant, or replacement tenant is to pay.
- (5) Unless expressly stated otherwise in an assignment or sublease, Tenant will not be released from Tenant's obligations under this lease because of an assignment or sublease. An assignment of this lease or a sublease of this lease without Landlord's written consent is voidable by Landlord.

29. ATTORNEY'S FEES: Any person who is a prevailing party in any legal proceeding brought under or related to the transaction described in this lease is entitled to recover prejudgment interest, attorney's fees, costs of service, and all other costs of the legal proceeding from the non-prevailing party.

30. REPRESENTATIONS: Tenant's statements in this lease and any application for rental are material representations. Each party to this lease represents that he or she is of legal age to enter into a contract. If Tenant makes a misrepresentation in this lease or in an application for rental, Tenant is in default.

31. ADDENDA: Incorporated into this lease are the following addenda, exhibits and other information. If Landlord's Rules and Regulations are made part of this lease, Tenant agrees to comply with the Rules and Regulations as Landlord may, at Landlord's discretion, amend from time to time.

- | | |
|--|--|
| <input type="checkbox"/> Addendum Regarding Lead-Based Paint | <input type="checkbox"/> Residential Lease Guaranty |
| <input type="checkbox"/> Inventory & Condition Form | <input type="checkbox"/> Landlord's Rules |
| <input type="checkbox"/> Landlord's Additional Parking Rules | <input type="checkbox"/> Owners' Association Rules |
| <input type="checkbox"/> Pet Agreement | <input type="checkbox"/> Agreement Between Brokers |
| <input type="checkbox"/> Protecting Your Home from Mold | <input type="checkbox"/> Residential Lease Application |
| <input type="checkbox"/> Bed Bug Addendum | <input type="checkbox"/> _____ |
| <input type="checkbox"/> _____ | <input type="checkbox"/> _____ |

32. NOTICES: All notices under this lease must be in writing and are effective when hand-delivered, sent by mail, or sent by electronic transmission to *(Do not insert an e-mail address or a fax number unless the party consents to receive notices under this lease at the e-mail address or fax number specified.):*

Tenant at the Unit and a copy to:

Landlord c/o:

Residential Lease concerning: _____

E-mail: _____
Fax: _____

E-mail: _____
Fax: _____

33. AGREEMENT OF PARTIES:

- A. Entire Agreement: There are no oral agreements between Landlord and Tenant. This lease contains the entire agreement between Landlord and Tenant and may not be changed except by written agreement.
- B. Binding Effect: This lease is binding upon and inures to the benefit of the parties to this lease and their respective heirs, executors, administrators, successors, and permitted assigns.
- C. Joint and Several: All Tenants are jointly and severally liable for all provisions of this lease. Any act or notice to, refund to, or signature of, any one or more of the Tenants regarding any term of this lease, its extension, its renewal, or its termination is binding on all Tenants executing this lease.
- D. Waiver: Landlord's past delay, waiver, or non-enforcement of a rental due date or any other right will not be deemed to be a waiver of any other breach by Tenant or any other right in this lease.
- E. Severable Clauses: Should a court find any clause in this lease unenforceable, the remainder of this lease will not be affected and all other provisions in this lease will remain enforceable.
- F. Controlling Law: The laws of the State of Texas govern the interpretation, validity, performance, and enforcement of this lease.
- G. Copyright: If an active REALTOR® member of Texas REALTORS® does not negotiate this lease as a party or for one of the parties, with or without the assistance by an active member of the State Bar of Texas, this lease is voidable at will by Tenant.

34. INFORMATION:

- A. Future inquires about this lease, rental payments, and security deposits should be directed to the person listed for receipt of notices for Landlord under Paragraph 32.
- B. It is Tenant's responsibility to determine, before signing this lease, if: (i) all services (e.g., utilities, connections, schools, and transportation) are accessible to or from the Unit; (ii) such services are sufficient for Tenant's needs and wishes; and (iii) Tenant is satisfied with the Unit's and Property's condition.
- C. The brokers to this lease have no knowledge of whether Landlord is delinquent in the payment of any lien against the Unit or Property.
- D. Unpaid rent and any unpaid amount under this lease are reportable to credit reporting agencies.
- E. Landlord is not obligated to respond to any request for Tenant's rental and payment history from a mortgage company or other prospective landlord until Tenant has given notice of termination of this lease and Tenant is not in breach of this lease. (*Notice: Landlord or Landlord's agent may charge a reasonable fee for processing such information.*) Tenant authorizes Landlord to disclose personal information about Tenant and Tenant's rental history for law enforcement and governmental purposes.
- F. If all occupants over 18 years of age die during this lease, Landlord may: (i) permit the person named below to access the Unit at reasonable times in Landlord's or Landlord's agent's presence; (ii) permit the named person to remove Tenant's personal property; and (iii) refund the security deposit, less

Residential Lease concerning: _____

deductions, to the named person. Section 92.014, Property Code governs procedures to follow **in the event of a tenant's death regarding a deceased tenant's personal property and security deposit.**

Name: _____ Phone: _____

Address: _____

E-mail: _____

G. 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 areas (see www.txdps.state.tx.us under online services). For information concerning past criminal activity in certain areas, contact the local police department.

H. Landlord's insurance does not cover Tenant from loss of personal property. Landlord highly recommends that Tenant obtain liability insurance and insurance for casualties such as fire, flood, water damage, and theft.

I. Landlord's broker, _____,
☐ will ☐ will not act as the property manager for landlord. If property is not managed by above-named broker, Property will be managed by ☐ Landlord or ☐ property manager for Landlord:

Name of property manager: _____ Phone: _____

Address: _____ E-mail: _____

J. This lease is negotiable between the parties. This lease is binding upon final acceptance. READ IT CAREFULLY. If you do not understand the effect of this lease, consult your attorney BEFORE signing.

Landlord _____ Date _____ Tenant _____ Date _____

Landlord _____ Date _____ Tenant _____ Date _____

Or signed for Landlord under written property management agreement or power of attorney:

Tenant _____ Date _____

By: _____ Date _____

Tenant _____ Date _____

Broker's Associate's Printed Name _____

Broker's Printed Name _____

License No. _____

For Landlord's Use:

On _____ * (date), Landlord provided a copy of the lease, signed by all parties, to at least one Tenant by ☐mail ☐e-mail ☐fax ☐in person.

Residential Lease concerning: _____

Note: Landlord must provide at least one copy of the lease to at least one Tenant **no later than three business days after the date the lease is signed by each party to the lease. Additionally, if more than one tenant is a party to the lease, no later than three business days after the date the Landlord receives a written request for a copy of a lease from a tenant who has not already received one as required above, the Landlord must provide a copy to the requesting tenant. Landlord may provide the copy of the lease in: (1) a paper format; (2) an electronic format if requested by the tenant; or (3) by e-mail if the parties have communicated by e-mail regarding the lease. See § 92.024, Property Code, for more details.*

Draft

