Texas Real Estate Law
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Module 9: Texas Statutes Affecting Real Estate

Module Description
This module will give the student a detailed overview of certain Texas statutes that potentially affect the daily activities of the licensee, including the Texas Deceptive Trade Practices Act, Texas constitutional and statutory homestead protections, and section 27.01 of the Texas Business and Commerce Code, which provides a statutory cause of action for fraud in real estate and stock transactions. A licensee should become familiar with these statutes so the licensee can avoid liability and provide guidance to clients in real estate transactions.
Module Learning Objectives

By the end of this module, you should be able to:

- Identify a consumer under the Texas Deceptive Trade Practices Act (DTPA).
- Identify goods and services that are covered by the Texas Deceptive Trade Practices Act.
- Describe transactions that are exempt from coverage of the Texas Deceptive Trade Practices Act.
- Exhibit a general understanding of the laundry list contained in the Texas Deceptive Trade Practices Act.
- Explain the causation standards under the Texas Deceptive Trade Practices Act.
- Describe the damages that may be awarded pursuant to the Texas Deceptive Trade Practices Act.
- Explain the settlement procedures outlined in the Texas Deceptive Trade Practices Act.
- Exhibit a general understanding of the defenses available under the Texas Deceptive Trade Practices Act.
- Explain the statute of limitations for actions under the Texas Deceptive Trade Practices Act.
- Describe when the defendant may be awarded attorney’s fees under the Texas Deceptive Trade Practices Act.
- Describe the nature and scope of Texas homestead protections.
- Describe the nature and scope of the Texas statute that provides a cause of action for fraud in real estate and stock transactions.

Key Terms

**Caveat Emptor:** A Latin term meaning “let the buyer beware.”

**Consumer:** For purposes of the DTPA, a consumer is an individual, partnership, corporation, this state (Texas), or a subdivision or agency of this state who seeks or
acquires by purchase or lease, any goods or services, except that the term does not include a business consumer that has assets of $25 million or more, or that is owned or controlled by a corporation or entity with assets of $25 million or more.

**DTPA:** An acronym for the Texas Deceptive Trade Practice Act, which is set forth in Chapter 17, Subchapter E, of the Texas Business and Commerce Code.

**Goods:** For purposes of the DTPA, tangible chattels or real property purchased or leased for use.

**Homestead:** The home and adjacent grounds occupied by a family.

**Intentionally:** For purposes of the DTPA, “intentionally” means actual awareness of the falsity, deception, or unfairness of the act or practice, or the condition, defect, or failure constituting a breach of warranty, coupled with the specific intent that the consumer act in detrimental reliance on the falsity or deception or in detrimental ignorance of the unfairness.

**Knowingly:** For purposes of the DTPA, “knowingly” means actual awareness of the falsity, deception, or unfairness of the act or practice giving rise to the consumer’s claim, or in an action brought for breach of express or implied warranty, actual awareness of the act, practice, condition, defect, or failure constituting the breach of warranty.

**Producing Cause:** An efficient, exciting, or contributing cause, which in a natural sequence, produces the injuries or damages complained of, if any.

**Rural Homestead:** In Texas, a rural homestead for a family, not located in a town or city, consists of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon. The rural homestead for a single,
adult person, not otherwise entitled to a homestead, consists of not more than one hundred acres, which may be in one or more parcels, with the improvements thereon.

Services: For purposes of the DTPA, work, labor, or service purchased or leased for use, including services furnished in connection with the sale or repair of goods.

The Laundry List: A list of 27 acts or practices that are deemed to be DTPA violations, set forth in section 17.46(b) of the Texas Business and Commerce Code.

Urban Homestead: In Texas, the urban homestead of a family or single, adult person, may consist of not more than ten acres which may be in one or more contiguous lots, if used for purposes as an urban home or as both an urban home and place to exercise a calling or business. A homestead is considered urban if, at the time the designation is made, the property is: (1) located within the limits of a municipality or its extraterritorial jurisdiction or a platted subdivision; and (2) served by police protection, paid or volunteer fire protection, and at least three of the following services: (A) electric; (B) natural gas; (C) sewer; (D) storm sewer; and (E) water.
Lesson 1: The Texas Deceptive Trade Practices Act

Lesson Topics
This lesson focuses on the following topics:

- Introduction
- Applicability—The “Consumer” and Covered “Goods and Services”
- Exemptions
- The Laundry List
- DTPA Claims
**Introduction**

At common law, real estate transactions were governed by the doctrine of “caveat emptor”—a Latin term for “let the buyer beware.” Essentially, the doctrine meant that a buyer could not bring a lawsuit to recover damages for property defects or misrepresentations unless those defects were “latent” (hidden) and within the knowledge of the seller. However, in 1973, the Texas legislature made significant alterations to the doctrine of “caveat emptor” by the adoption of the Texas Deceptive Trade Practice Act (hereinafter “DTPA” or the “Act”). The stated purpose of the Act is to protect consumers against “...false, misleading, and deceptive trade practices, unconscionable actions, and breaches of warranty and to provide efficient and economical procedures to secure such protection.” The Act specifically includes “...real property purchased or leased for use” and “services” within its protections.

The Act is broad in scope and provides attractive remedial provisions, including the recovery of economic damages and attorney's fees. Additionally, if the trier of fact (judge or jury) finds that the deceptive act was committed “knowingly,” the trier of fact can award damages for mental anguish and total damages of up to three times the amount of economic damages. If the trier of fact finds that the deceptive act was committed intentionally, the consumer may recover damages for mental anguish and total damages of up to three times the amount found by the trier of fact for mental anguish and economic damages.

Since its enactment, the DTPA has resulted in substantial amounts of litigation against licensees and their clients. Accordingly, a prospective licensee should take care to learn key DTPA provisions so that the licensee does not run afoul of the Act's provisions. Additionally, a licensee should always consult with a qualified attorney if the licensee has questions regarding the application of the Act.
Applicability—The “Consumer” and Covered “Goods and Services”

A threshold question under the DTPA is whether the individual seeking a remedy pursuant to the Act's provision is a “consumer.” A “consumer” is defined as “. . . an individual, partnership, corporation, this state (Texas), or a subdivision or agency of this state who seeks or acquires by purchase or lease, any goods or services, except that the term does not include a business consumer that has assets of $25 million or more, or that is owned or controlled by a corporation or entity with assets of $25 million or more.”

“Goods” are defined as “. . . tangible chattels or real property purchased or leased for use. “Services” are defined as “. . . work, labor, or service purchased or leased for use, including services furnished in connection with the sale or repair of goods.” A “business consumer” is an individual, partnership, or corporation who seeks or acquires by purchase or lease, any goods or services for commercial or business use, not including this state (Texas) or a subdivision or agency of this state.

As a result of the broad definitions of “consumer” and “goods and services,” virtually all of a licensee's activities are covered by the Act. Real property “purchased or leased for use” is included within the definition of goods. Services covered by the Act include services “purchased or leased for use” or “furnished in connection with the sale of . . . goods,” which includes real property. Use has been interpreted to mean “purchasing or leasing for any ‘use’ or reason.” Thus, the Act applies to all of the relationships a licensee may encounter in the day to day conduct of the licensee's business, including broker/salesman (services), seller/listing agent (services), seller/buyer (sale of real property), and licensee/buyer (services and/or sale of real property). As a result of the expansive application of the DTPA, it is the licensee, and not the buyer, that needs to “beware.”
Yet, in spite of its wide scope, the Act does not apply to all real property leases, sales, or transactions. For example, the Act excludes business consumers with assets of $25 million or more, or business consumers that are owned or controlled by entities that have assets of $25 million or more. Note, however, this exception only applies to business consumers, which are defined as entities who seek or acquire by purchase or lease, any goods or services for commercial or business use. Accordingly, the Act would not apply to a licensee’s activities when representing a company, or a subsidiary of a company, in a search for commercial office space, so long as the company or parent corporation has assets of $25 million or more. Also, there are certain exemptions for “large transactions” and “professional services” that will be discussed in more detail below.

Exemptions

One of the significant exemptions contained in the Act concerns the rendering of a “professional service.” The Act does not apply to the rendering of a professional service, the essence of which is the providing of advice, judgment, opinion, or similar professional skill. Although a licensee might think this exemption applies to all of a licensee’s activities, that is not the case. For example, the mere listing of a house with a multiple listing service, placing advertisements, and showing the home to prospective buyers would not constitute services in which the essence is the providing of advice, judgment, opinion, or similar professional skill. Accordingly, these activities would not be exempt. However, if a licensee were to provide a property evaluation and sales recommendation based on the licensee’s experience and knowledge of the marketplace, such a service may, in essence, be providing advice, judgment, opinion, or similar professional skill. Ultimately, the application of the “professional service” exemption will depend on the circumstances of each situation, and the licensee should seek legal advice from a qualified attorney.
Additionally, the professional service exemption is very narrow. It does not apply to:

(1) an express misrepresentation of a material fact that cannot be characterized as advice, judgment, or opinion; (2) a failure to disclose information concerning goods or services known at the time of the transaction if such failure to disclose was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed; (3) an unconscionable action or course of action that cannot be characterized as advice, judgment, or opinion; (4) breach of an express warranty that cannot be characterized as advice, judgment, or opinion; or (5) selling, offering to sell, or illegally promoting certain kinds of annuity contracts.

The DTPA also contains exemptions for two types of large transactions. However, it is important to note that these large transaction exemptions do not apply to a contract or cause of action involving a consumer’s residence. The Act defines “residence” as a single-family house, duplex, triplex, quadruplex, or a unit in a condominium or cooperative that is occupied or to be occupied as the consumer’s residence.

The Act exempts a contract if it relates to a transaction, a project, or a set of transactions related to the same project involving the total consideration by the consumer of more than $100,000, provided the consumer is represented by legal counsel who is not directly or indirectly identified, suggested, or selected by the defendant or the defendant’s agent. Also, as noted above, the transaction cannot involve the consumer’s residence. Accordingly, if a licensee was showing a consumer rental property with a purchase value in excess of $100,000, and the consumer was represented by an attorney of her own choosing, the Act would not apply to the licensee’s activities.
Also, the DTPA exempts a transaction, project, or a set of transactions relating to the same project, involving the total consideration by the consumer of more than $500,000, except for a transaction, project, or set of transactions relating to the same project that involve the consumer's residence. For example, if a licensee were showing a prospective buyer investment properties that had a purchase value in excess of $500,000, the licensee's activities would be exempt from the Act.

**The Laundry List**

Section 17.46(b) of the Texas Business and Commerce Code contains a list of 27 acts or practices that are deemed to be violations of the Act. These enumerated deceptive acts or practices are usually referred to by attorneys and the courts as “the laundry list.” The laundry list prohibitions are generally self explanatory and noted below:

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 of geographic origin in connection with goods or services;
5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;
6) representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand;
7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
8) disparaging the goods, services, or business of another by false or misleading representation of facts;
9) advertising goods or services with intent not to sell them as advertised;
10) advertising goods or services with intent not to supply a reasonable expected public demand, unless the advertisements disclosed a limitation of quantity;
11) making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;
12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;
13) knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;
14) misrepresenting the authority of a salesman, representative, or agent to negotiate the final terms of a consumer transaction;
15) basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any;
16) disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge;
17) advertising of any sale by fraudulently representing that a person is going out of business;
18) advertising, selling, or distributing a card which purports to be a prescription drug identification card issued under section 4151.152, Insurance Code, in accordance with rules adopted by the commissioner of insurance, which offers a discount on the purchase of health care goods or services from a third party
19) provider, and which is not evidence of insurance coverage, unless:
   (A) the discount is authorized under an agreement between the seller of the card and the provider of those goods and services or the discount or card is offered to members of the seller;
(B) the seller does not represent that the card provides insurance coverage of any kind; and

(C) the discount is not false, misleading, or deceptive;

20) using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of

21) an event subsequent to the time the buyer purchases the merchandise or goods;

22) representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve, provided, however, that nothing in this subchapter shall be construed to expand the implied warranty of merchantability as defined in sections 2.314 through 2.318 and sections 2A.212 through 2A.216 to involve obligations in excess of those which are appropriate to the goods;

23) promoting a pyramid promotional scheme, as defined by section 17.461;

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

25) filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the
26) county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract; provided, however, that a violation of this subsection shall not occur where it is shown by the person filing such suit he neither knew or had reason to know that the county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract;

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

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

29) selling, offering to sell, or illegally promoting an annuity contract under Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), with the intent that the annuity contract will be the subject of a salary reduction agreement, as defined by that Act, if

30) the annuity contract is not an eligible qualified investment under that Act or is not registered with the Teacher Retirement System of Texas as required by section 8A of that Act; or

31) taking advantage of a disaster declared by the governor under Chapter 418, Government Code, by:

   (A) selling or leasing fuel, food, medicine, or another necessity at an exorbitant or excessive price; or

   (B) demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, or another necessity.
The majority of DTPA suits that are based on laundry list violations make allegations under sections 5, 7, 12, and 24 because these provisions are broad and cover many types of prohibited conduct. For example, if a licensee misrepresents the value of a house to a prospective purchaser, the licensee violates section 5. If the licensee misrepresents the structural quality of a house, the licensee violates section 7. If a licensee misrepresents the scope of his duties under a buyer’s agency agreement, the licensee violates section 12. If the licensee fails to disclose known structural defects, such as a bad foundation, the licensee violates section 24.

A consumer may base a DTPA cause of action on oral statements, and there is no requirement that the consumer be in privity with the defendant. The laundry list provisions are deemed unlawful and actionable upon their occurrence and may occur prior to, during, or after a transaction. Further, the plaintiff is not required to prove knowledge or any type of intent on the part of the defendant (except where expressly required by the Act). However, similar to cases involving common law fraud, the courts have held that mere opinion, puffing, or vague generalizations are not DTPA violations.

**DTPA Claims**

Section 17.50 of the Texas Business and Commerce Code contains the remedy portions of the Act. A consumer may maintain a cause of action where any of the following constitute a producing cause of economic damages or damages for mental anguish:

1. the use or employment by any person of a false, misleading, or deceptive act or practice that is:
   - (A) specifically enumerated in section 17.46(b); and
   - (B) relied on by the consumer to the consumer’s detriment;
2. breach of an express or implied warranty;
3. an unconscionable action or course of action by any person; or
(4) the use or employment by any person of an act or practice in violation of Chapter 541, Insurance Code.

A producing cause is an efficient, exciting, or contributing cause, which in a natural sequence, produces the injuries or damages complained of, if any. An unconscionable action or course of action means an act or practice which, to a consumer's detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.

A consumer who prevails under the Act is entitled to recover economic damages. Economic damages are compensatory damages for pecuniary loss, including costs of repair or replacement. However, the term does not include exemplary (punitive) damages or damages for physical pain and mental anguish, loss of consortium, disfigurement, physical impairment, or loss of companionship and society.

If the trier of fact finds that defendant's conduct was committed knowingly, the consumer may also recover damages for mental anguish and total damages not more than three times the amount of economic damages. If the trier of fact finds the conduct was committed intentionally, the consumer may recover damages for mental anguish and total damages not more than three times the amount of damages for mental anguish and economic damage.

“Knowingly” means actual awareness of the falsity, deception, or unfairness of the act or practice giving rise to the consumer's claim or, in an action brought under section 17.50(a)(2), actual awareness of the act, practice, condition, defect, or failure constituting the breach of warranty.
"Intentionally" means actual awareness of the falsity, deception, or unfairness of the act or practice, or the condition, defect, or failure constituting a breach of warranty, coupled with specific intent that the consumer act in detrimental reliance on the falsity or deception or in detrimental ignorance of the unfairness.

Additionally, if the consumer prevails, it is mandatory that the court award reasonable and necessary attorney's fees.

A prevailing consumer is also entitled to:

1. an order enjoining such acts or failure to act;
2. orders necessary to restore to any party to the suit any money or property, real or personal, which may have been acquired in violation of this subchapter; and
3. any other relief which the court deems proper, including the appointment of a receiver or the revocation of a license or certificate authorizing a person to engage in business in this state if the judgment has not been satisfied within three months of the date of the final judgment. The court may not revoke or suspend a license or appoint a receiver to take over the affairs of a person who has failed to satisfy a judgment if the person is a licensee of or regulated by a state agency which has statutory authority to revoke or suspend a license or to appoint a receiver or trustee.

**Notice and Settlement**

As a prerequisite to filing suit, the consumer must give written notice to the defendant at least 60 days before filing suit, advising the defendant in reasonable detail of the consumer's specific complaint and the amount of economic damages, damages for mental anguish, and expenses, including attorney's fees. During the 60-day period, the defendant may make a written request to inspect, in a reasonable manner and at a reasonable time and place, the goods that are the subject of the consumer's claim.
If the consumer fails to provide the required written notice, the defendant may file a plea in abatement. The suit is abated (paused) until the consumer gives written notice.

The defendant may make a settlement offer within 60 days after receipt of plaintiff's DTPA notice. The settlement offer must include an offer to pay the following amounts of money, separately stated: (1) money or other consideration, reduced to its cash value, as settlement of the consumer's claim; and (2) money to compensate the consumer for reasonable and necessary attorney's fees. If plaintiff rejects defendant's settlement offer and files suit, defendant may file an affidavit with the court certifying that defendant's settlement offer has been rejected. If the court finds that the amount tendered in defendant's settlement offer is substantially the same as, or more than, the damages found by the trier of fact, the consumer may not recover any amount in excess of the lesser of: (1) the amount of damages tendered in the settlement offer; or (2) the amount of damages found by the trier of fact. Further, plaintiff's recovery of attorney's fees will be limited to reasonable and necessary attorney's fees incurred before the date and time of the rejected settlement offer. If the court finds that the attorney's fees tendered in the settlement offer are substantially the same as, or more than, the reasonable and necessary attorney's fees incurred by the consumer as of the date of the offer, the consumer is limited to recovery of the attorney's fees tendered in the settlement offer.

Not later than 90 days after plaintiff's suit is served on defendant, either party may file a motion to compel mediation. Generally, the mediation is to be held within 30 days after the court signs the order compelling mediation. Each party shares the mediation fee. However, if the amount of economic damages claimed is less than $15,000, the party seeking mediation must pay the costs of mediation. If mediation is conducted, the defendant may make a settlement offer within 20 days after the mediation ends. If the plaintiff rejects the defendant's settlement offer, the
defendant may file an affidavit certifying that the plaintiff rejected the defendant's offer. The defendant is then entitled to assert the remedies stated in the paragraph above.

**Defenses**

In reality, there are very few defenses to a DTPA action. The majority of common law defenses to a typical breach of contract or tort claim, including substantial performance, parol evidence, waiver, and estoppel, do not apply. However, the defendant can assert contract language that negates causation. If the defendant can prove that the consumer knowingly and voluntarily signed a contract stating that the consumer was not relying on any representation of the seller, the defendant can utilize such language to assert that the alleged deceptive act or practice was not a producing cause of damages. In the majority of the cases, though, the primary defenses are that the defendant did not engage in the alleged deceptive act or practice, or that the alleged deceptive act or practice was not the producing cause of the consumer's damages.

Further, the Act provides for some limited statutory defenses. It is a defense to a DTPA claim if, before consummation of the transaction, the defendant gave timely written notice to the plaintiff of the defendant's reliance on:

1. written information relating to the particular goods or service obtained from official government records if the written information was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information;
2. written information relating to the particular goods or service in question obtained from another source if the information was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information; or
3. written information concerning a test required or prescribed by a government agency if the information from the test was false or inaccurate and the
defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information.

The defendant must prove the written information was a producing cause of the consumer's alleged damage. Provided no double recovery will result, the consumer may assert a suit against the third party supplying the written information where the third party knew or should have foreseen that the information would be provided to a consumer.

Limitations
All DTPA suits must be commenced within two years after the date on which the false, misleading, or deceptive act or practice occurred, or within two years after the consumer discovered or in the exercise of reasonable diligence should have discovered the occurrence of the false, misleading, or deceptive act or practice. The limitations period may be extended for 180 days if the plaintiff proves that failure to timely bring suit was caused by the defendant's knowing conduct, solely calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

Defendant’s Attorney Fees
If the court finds a DTPA action was groundless in fact or law, brought in bad faith, or brought for the purpose of harassment, the court must award the defendant’s reasonable and necessary attorney’s fees incurred in defending the suit. This provision is designed to discourage frivolous lawsuits. Note the statute requires the court, or judge, to make these findings, not the jury.

A claim is groundless if it has no basis in law or fact and is not warranted by a good faith argument for extension, modification, or reversal of existing law. A claim is brought in bad faith if it is characterized by malice, ill will, spite, or reckless disregard of the law or facts. A defendant can show harassment by establishing
that the suit is of no benefit to the consumer, meaning that, in effect, the consumer remains in the same position, whether the consumer wins or loses the suit. In practice, it is very difficult to prove that a claim is groundless and brought in bad faith or brought for the purpose of harassment.

Lesson Summary

The Texas Deceptive Trade Practices is a powerful consumer protection statute that applies to virtually all of the daily activities of a licensee. The Act specifically includes “. . . real property purchased or leased for use” and “services” within its protections. The Act is broad in scope and provides attractive remedial provisions, including the recovery of economic damages and attorney’s fees. Additionally, a consumer can recover damages for mental anguish and total damages up to three times the amount of economic damages if the trier of fact (judge or jury) finds that the deceptive act was committed “knowingly.” If the trier of fact finds that the deceptive act was committed intentionally, the consumer may recover damages for mental anguish and total damages up to three times the amount found by the trier of fact for mental anguish and economic damages.

The Act includes a broad definition for “consumer,” including “. . . an individual, partnership, corporation, this state (Texas), or a subdivision or agency of this state who seeks or acquires by purchase or lease, any goods or services.” The term does not include a business consumer that has assets of $25 million or more, or that is owned or controlled by a corporation or entity with assets of $25 million or more. “Goods” are defined as “. . . tangible chattels or real property purchased or leased for use. “Services” are defined as “. . . work, labor, or service purchased or leased for use, including services furnished in connection with the sale or repair of goods.”
A consumer may recover for a laundry list violation relied on by the consumer to the consumer’s detriment, breach of an express or implied warranty, and an unconscionable action or course of action, providing the deceptive act or practice was a producing cause of economic damages or damages for mental anguish. There are limited defenses to the Act, and the list of deceptive acts and practices is long.
Lesson 2: Texas Homestead Protections

Lesson Topics
This lesson focuses on the following topics:

- Introduction
- Current Scope of Texas Homestead Protections
- Permitted Encumbrances on Homestead Property
- Home Equity Loans
Introduction

Many families who settled in Texas in the early nineteenth century were pursued by their creditors. As a result, Texas enacted very strong homestead, or family home, protections, exempting from creditors' claims lands received from the sovereign as well as certain movable property. Although the original act was ultimately repealed, homestead protections were included in the Texas Constitution of 1845 and have been incorporated in all constitutions and amendments that have been adopted since that time.

The Texas homestead laws prevent a creditor (except for certain creditors listed in the constitution, including a mortgage holder, a taxing authority, or the holder of a note created for a home improvement loan) from forcing the sale of the homestead to pay of a debt. The Texas Constitution was amended, effective January 1998, to allow home equity loans. However, there are strict legal requirements for placing a lien securing a home equity loan on a Texas homestead.

Current Scope of Texas Homestead Protections

Texas has generous real and personal property exemptions. A person’s real property, used as a homestead, and one or more lots used for a place of burial, are exempt from the claims of creditors except for encumbrances properly fixed on homestead property.

The urban homestead of a family or single, adult person may consist of not more than 10 acres which may be in one or more contiguous lots, if used for purposes as an urban home or as both an urban home and place to exercise a calling or business. A homestead is considered urban if, at the time the designation is made, the property is: (1) located within the limits of a municipality or its extraterritorial jurisdiction or a platted subdivision; and (2) served by police protection, paid or volunteer fire protection, and at least three of the following services: (A) electric; (B) natural gas; (C) sewer; (D) storm sewer; and (E) water.
A family homestead, not in a town or city, consists of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon. If used for the purposes of a rural home, the homestead for a single, adult person, not otherwise entitled to a homestead, consists of not more than one hundred acres, which may be in one or more parcels, with the improvements thereon.

Temporary renting of the homestead does not change the homestead character of the property when no other homestead has been acquired.

Texas allows an individual to exempt up to $30,000 in personal property and a family to exempt up to $60,000 in personal property, exclusive of liens, security interests, or other charges encumbering the property. Further, the following personal property is exempt from seizure and is not included in the aggregate limitations specified above: (1) wages for personal services; (2) professional prescribed health aids; (3) alimony, support, or separate maintenance received or to be received by the debtor for the support of the debtor or a dependent of the debtor; and (4) a religious bible or other sacred writings of a religion that is seized by a creditor other than a lessor of real property who is exercising the lessor’s contractual or statutory right to seize personal property after a tenant breaches a lease agreement or abandons the real property. Unpaid commissions for personal services not to exceed 25 percent of the aggregate limitations are exempt from seizure and included in the aggregate.

Subject to the aggregate limitations described above, exempt property includes: (1) home furnishings, including family heirlooms; (2) provisions for consumption; (3) farming or ranching vehicles and implements; (4) tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession; (5) wearing apparel; (6) jewelry not to exceed $7,500 for a single person and $15,000 for a family; (7) two firearms; (8) athletic and sporting equipment, including bicycles;
(9) a two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of a family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the nonlicensed person; (10) the following animals and forage on hand for their consumption: (A) two horses, mules, or donkeys and a saddle, blanket, and bridle for each; (B) 12 head of cattle; (C) 60 head of other types of livestock; and (D) 120 fowl; and (11) household pets.

Permitted Encumbrances on Homestead Property
Encumbrances may be properly fixed on homestead property only for: (1) purchase money; (2) taxes on the property; (3) work and material used in constructing improvements on the property if properly contracted for in writing as provided by sections 53.254(a), (b), and (c) of the Texas Property Code; (4) an owelty of partition arising out of the unequal division of co-tenancy property, for example, in a divorce; (5) refinance of a lien against homestead, including a federal tax lien; (6) an extension of credit that meets the requirements of section 50(a)(6), Article XVI, Texas Constitution (home equity loans); or (7) a reverse mortgage that meets the requirements of sections 50(k) – (p), Article XVI, Texas Constitution. An owelty of partition is a lien created or a sum paid by court order to effect an equitable partition of property (as in a divorce) when a partition in kind would be impossible, impracticable, or prejudicial to one of the parties.

Home Equity Loans
In Texas, borrowers can utilize 80 percent of the value of their homes as collateral for a home equity loan, including the balance of all existing mortgages. For example, assume a borrower owns a home worth $150,000, with $75,000 in existing mortgage indebtedness. The homeowner could borrow up to 80 percent of the value of the home, or $120,000. In this example, the borrower could secure a home equity loan of $45,000, which represents the available equity after
subtracting the existing mortgage indebtedness of $75,000 from $120,000 (80 percent of the home’s value).

Also, a Texas borrower can establish a home equity line of credit using up to 50 percent of the value of the home as collateral (as opposed to the 80 percent allowed on standard loans). In the above example, the borrower could not obtain a home equity “line of credit” loan because the borrower lacks sufficient equity in the home.

The Texas Constitution contains detailed restrictions on the use of home equity loans. In order to secure a valid lien against a Texas homestead, the lender is required to meet all of the requirements set forth in Article 16, Section 50, of the Texas Constitution.

Among other things, the law requires a 12-day waiting period after a consumer submits an application and receives written notice of his consumer rights. In essence, then, the borrower has 12 days to back out of the transaction before the loan is closed. No pre-payment penalties are allowed, and the lender cannot force the borrower to utilize his home as collateral on any other loan. Both spouses must sign all loan documents. Additionally, the homeowner or homeowner’s spouse can cancel the contract without penalty within three days after the closing. Further, a borrower can only have one home equity loan at a time, and the loan cannot be refinanced more frequently than once a year. The loan must be made without recourse for personal liability against each owner and the spouse of each owner, unless the owner or spouse obtained the extension of credit by actual fraud.

The lien securing the home equity loan may only be foreclosed upon by a court order. Rules 735 and 736 of the Texas Rules of Civil Procedure govern the foreclosure of home equity loans. Texas does not allow non-judicial foreclosure of home equity loans.
The owner may not be required to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit. The loan may not be in the form of an open-end account that may be debited from time to time or under which credit may be extended from time to time unless the open-end account is a home equity line of credit. The loan may not be secured by any additional real or personal property other than the homestead, or by homestead property designated for agricultural use. The lien may not be accelerated because of a decrease in the market value of the homestead or because of the owner’s default under other indebtedness not secured by a prior valid encumbrance against the homestead.

Lesson Summary

Texas has a long history of protecting the family homestead from the forced sale of the property in order to satisfy a debt, except for certain creditors listed in the constitution, including a mortgage holder, a taxing authority, or the holder of a note created for a home improvement loan. Effective January 1998, the Texas Constitution was amended to allow borrowers to utilize up to 80 percent of the value of their homes as collateral for a home equity loan, including the balance of all existing mortgages. Also, a Texas borrower can establish a home equity line of credit using up to 50 percent of the value of the home as collateral (as opposed to the 80 percent allowed on standard loans). The Texas Constitution contains detailed restrictions on the use of home equity loans. In order to secure a valid lien against a Texas homestead, the lender is required to meet all of the requirements set forth in Article 16, Section 50, of the Texas Constitution.

The urban homestead of a family or single, adult person may consist of not more than ten acres which may be in one or more contiguous lots, if used for purposes as an urban home or as both an urban home and place to exercise a calling or business. A homestead is considered urban if, at the time the designation is made,
the property is: (1) located within the limits of a municipality or its extraterritorial jurisdiction or a platted subdivision; and (2) served by police protection, paid or volunteer fire protection, and at least three of the following services: (A) electric; (B) natural gas; (C) sewer; (D) storm sewer; and (E) water.

A family homestead, not in a town or city, consists of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon. If used for the purposes of a rural home, the homestead for a single, adult person, not otherwise entitled to a homestead, consists of not more than one hundred acres, which may be in one or more parcels, with the improvements thereon.

Texas law also provides for generous personal property exemptions, which are itemized in detail in Chapter 42 of the Texas Property Code.
Lesson 3: Statutory Prohibitions against Fraud in the Sale of Real Estate

Lesson Topics
This lesson focuses on the following topics:

- Introduction
- Fraud in Real Estate—Elements of the Cause of Action
- Attorney’s Fees
Introduction

Texas has enacted a statutory cause of action for fraud in real estate and stock transactions. The statute simplifies the elements the defrauded party must prove in order to recover damages and allows for recovery of attorney's fees and expert witness. In these respects, the statute is superior to a common law fraud action and provides another method for an aggrieved party in a real estate transaction to seek damages as a result of a false representation or a false promise.

Fraud in Real Estate—Elements of the Cause of Action

At common law, an injured plaintiff had to prove the following elements in order to recover under a cause of action for fraud: (1) a false statement of a material fact; (2) made knowingly by the defendant; (3) for the purposes of inducing reliance by the plaintiff; (4) followed by reasonable reliance by the plaintiff; and (5) resulting in actual damages to the plaintiff.

Section 27.01 of the Texas Business and Commerce Code states that fraud in a transaction involving real estate consists of a: (1) false representation of a past or existing material fact, when the false representation is (A) made to a person for the purpose of inducing that person to enter into a contract; and (B) relied on by that person in entering into that contract; or (2) a false promise to do an act, when the false promise is (A) material; (B) made with the intention of not fulfilling it; (C) made to a person for the purpose of inducing that person to enter into a contract; and (D) relied on by that person in entering into that contract.

Accordingly, the statute provides for two types of causes of action – one based on “false representation” and the other based on “false promise.”

A cause of action for “false representation” under the statute is much easier to prove than a cause of action for common law fraud. Under the statute, a “false representation” is actionable if it is made for the purpose of inducing a person into
entering a contract and relied on by that person in entering the contract. At common law, the false statement had to be material, and the plaintiff had to prove the defendant knew the statement was false. The statute has no requirement for materiality or knowledge when making a claim for false representation.

A cause of action for “false promise” under the statute more closely resembles a cause of action for common law fraud. The plaintiff must show the false promise was (A) material, (B) made with the intention of not fulfilling it, (C) made for the purpose of inducing the person into entering the contract; and (D) relied on by that person in entering into that contract.

A person who makes a false representation or false promise is liable to the defrauded party for actual damages. If a person makes a false representation or false promise with actual awareness of the falsity, the person is liable to the defrauded party for exemplary damages. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

The statute also allows the recovery of exemplary damages against a third party for failure to disclose. If a person has actual awareness of the falsity of a representation or promise made by another person, fails to disclose the falsity of the representation or promise to the defrauded party, and benefits from the false representation or false promise, that person is liable to the defrauded party for exemplary damages. Again, actual awareness may be inferred.

As with the Texas Deceptive Trade Practices Act, the Texas statutory cause of action for fraud in real estate transactions is broad and applies to almost all aspects of a licensee’s activities in marketing and selling real estate. Accordingly, the licensee should take care to ensure that all factual representations made to buyers or sellers are true and to provide full disclosure consistent with licensee’s fiduciary obligations and ethical requirements.
Attorney’s Fees

In addition to actual and exemplary damages, the Texas statute for fraud in real estate transactions allows the plaintiff to recover reasonable and necessary attorney’s fees and expert witness fees. In this respect, the statute is superior to an action for common law fraud, which does not allow the recovery of attorney’s fees.

Lesson Summary

Texas provides a statutory cause of action for fraud in real estate and stock transactions. The statute simplifies the elements the defrauded party must prove in order to recover damages and allows for recovery of attorney’s fees and expert witness fees. The statute provides for two types of causes of action – one based on “false representation” and the other based on “false promise.”

A cause of action for “false representation” is much easier to prove than a cause of action for common law fraud. Under the statute, a “false representation” is actionable if it is made for the purpose of inducing a person into entering a contract and relied on by that person in entering the contract. At common law, the false statement had to be material, and the plaintiff had to prove the defendant knew the statement was false. The statute has no requirement for materiality or knowledge when making a claim for false representation.

A cause of action for “false promise” under the statute more closely resembles a cause of action for common law fraud.
A person who makes a false representation or false promise is liable to the defrauded party for actual damages. If a person makes a false representation or false promise with actual awareness of the falsity, the person is liable to the defrauded party for exemplary damages. The statute also allows the recovery of exemplary damages against a third party for failure to disclose.

*Please return to the course player to take the interactivities, module quiz and then the final exam.*