

EXAM SPECIFICATIONS FOR REAL ESTATE LAW

PURPOSE OF THE EXAM. The purpose of the certification exam is to require an applicant to demonstrate substantial knowledge of significant legal concepts and corresponding skills in the overall area of real estate law, and specifically, the sub-categories of commercial real estate law, farm and ranch real estate law, residential real estate law, and property owners association law as applicable.

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES. An applicant in real estate law is expected to understand the concepts of ownership, transfer and financing of land, and the creation and operation of common interest developments. It also includes leasing as well as governmental regulation of real estate. The knowledge, skills and abilities required of a commercial real estate law, farm and ranch real estate law, and residential real estate law, and property owners' association law applicant are set out on the following pages.

EXAM FORMAT. The exam consists of a three-hour morning session with three essay questions each worth 100 points and a three-hour afternoon session with 100 multiple choice questions (10 of which involve professional ethics) each worth 2 points. The required passing score is **350**. The essay portion of the exam may be taken by laptop (supplied by the examinee) or by writing. Answers to the multiple choice questions will be documented by the applicant on a scantron answer sheet supplied by TBLS.

EXAM GRADING. All exam materials are confidential and not available for review. Essay answers are graded anonymously and identified only by an assigned examinee number. Multiple choice answers are computer graded. Successful examinees are notified that they passed but are not provided with the specific score. Unsuccessful examinees are notified of the exam score. Exams that score 10 points below the passing grade are automatically regraded. Exam results are final.

ESSAY QUESTIONS. Essay questions concentrate on the specific sub-category in which an applicant is seeking certification. Essay questions consist of a fact pattern followed by a series of questions (usually 4-6) for an applicant to answer. Essays are designed to require an applicant to recognize and analyze issues in the fact pattern and explain how those issues should be resolved. The fact patterns will involve situations you would likely encounter in your practice. Essay typically involve:

- **Commercial Real Estate Law** - commercial lease rights and obligations, issues in the acquisition, financing and development of real estate, and land use regulations.
- **Farm and Ranch Real Estate Law**- the nature and extent of real estate ownership interests, surface and mineral estate leases, and other issues in acquisition of large parcels of land such as easements, water rights, and ad valorem taxation.
- **Residential Real Estate Law**- contracts for sale, purchase and home equity loans, title issues, and landlord/tenant rights and obligations.

Applicants should make sure to provide the specific information each question asks for and to communicate as clearly as possible. An organized, clearly written answer using complete sentences will almost always receive a

higher score than a choppy, disorganized one. In order to pass the exam, applicants must be able to clearly express answers in a manner that would be persuasive to the decision-maker in a case.

MULTIPLE CHOICE QUESTIONS. These questions are designed to test a breadth of issues in the specialty area and require an applicant to select the **best** available answer option. These questions cover both general real estate law principles that are common to all sub-categories and specific area sub-specialty principles.

The Part II Multiple Choice consists of these sections:

1. Shared Common Section- 70 questions covering general Real Estate Topics (A).
2. Sub-Specialty Section- 20 questions (B-D)*.
3. Ethics Section – 10 Shared common questions (all TBLS exams, quest. 90-100).

*RC, RF, RR examinees have combination of 20 questions from the RC, RF, RR subspecialty area topics (B-D).

NOTE: NOT ALL TOPICS LISTED BELOW WILL BE COVERED ON ANY GIVEN EXAM. APPLICANTS WILL BE TESTED ON RULES AND LAWS IN EFFECT AT THE TIME OF THE EXAM UNLESS OTHERWISE SPECIFIED.

A. General Real Estate Law (Shared Common Portion)

1. Acknowledgment and notary laws
2. Acquisition, financing and disposition of real property:
 - a. Earnest Money Contracts, including Statutory Notices required by Seller
 - b. Review of title commitment and survey; including objection letters
 - c. Due diligence issues; including zoning, environmental, land use restrictions, property condition, existing contracts, and rights of parties in possession
 - d. Financing documents (conventional, VA/FHA, and seller financing), including loan agreement, promissory note, deed of trust, security agreement, financing statements, assignment of rents, guaranty agreements (including recourse carve out provisions); notice of final agreement, environmental and other indemnity agreements, and third party assignments
 - e. Options
 - f. Conveyance documents, including General vs. Special Warranty Deed, Assignment of Leases, and Assignment of Contracts
 - g. RESPA and other settlement documents
3. Actions, remedies and defenses in actions concerning real property, including Adverse Possession, Trespass to Try Title; and rights and obligations created by the filing of a Lis Pendens
4. Ad Valorem taxes and lien rights
5. Bankruptcy effect on pending contracts and leases
6. Broker and sales agent laws and regulation
7. Condominiums and other shared ownership interests
8. Current developments (State legislation and court decisions during prior 3 years)
9. Condemnation, including inverse taking claims
10. Construction:
 - a. Contracts
 - b. Mechanic's and Materialman's Liens, including filing requirements

- c. Lien Waivers and Releases
- d. Bonds in lieu of lien rights
- 11. Development, zoning, and platting of real estate
- 12. Easements: creation, maintenance, termination, and enforcement
- 13. Escrow agent liabilities and duties
- 14. Federal Tax Liens, Abstracts of Judgments, and other involuntary liens
- 15. Federal and state regulation of real estate, including American with Disabilities Act and Texas antidisability discrimination laws and Environmental laws (CERCLA, etc.)
- 16. Foreclosures, including military service issues, UCC Sales, Deeds in Lieu of Foreclosure, loan workouts, and other lender remedies
- 17. Insurance and Indemnities
- 18. Interests and estates in real property, including community (marital) v. separate property rights; effect of divorce and death; reservations v. exceptions to title; homestead rights and voluntary liens
- 19. Leases:
 - a. Landlord/Tenant rights and responsibilities
 - b. Rights of Tenant and Purchaser incident to foreclosure of Landlord's interest in the leased premises
- 20. Liens and lien priority
- 21. Management of property
- 22. Manufactured Housing Units
- 23. Mineral owner rights (including lessees) vs. rights of surface estate owners
- 24. Opinion letters (seller, buyer, mortgagee)
- 25. Owelty
- 26. Power of Attorney
- 27. Premises Liability
- 28. Property owner associations and entities
- 29. Restrictive covenants and other deed restrictions
- 30. Statutes of Frauds
- 31. Water Rights; classification of types of water (including "Surface Water" and "Ground Water"); creation and authority of Ground Water Districts
- 32. Recording statutes
- 33. Trespass to try title and other title issues, including governmental rights, vacancies and patents, waterways
- 34. Title insurance and agent issues, including:
 - a. Examination of commitment and policy for coverage, endorsements, exceptions, and requirements b. Objections
 - c. Closing instructions
 - d. Subrogation rights of title insurers
- 35. Transfer on death and "Lady Bird" deeds
- 36. Usury issues
- 37. Utility Districts
- 38. Loans and rights and remedies between borrowers, lenders, and guarantors,

B. Commercial Real Estate Law

1. Assignment of Rents Act
2. Business entity selections to own, develop and operate commercial real estate and effect of business entity transfer restrictions
3. Commercial foreclosures and effect on commercial and residential tenancies
4. Default planning and workouts, including alternatives to foreclosure
5. Governmental authority and regulation
6. Insurance and indemnity considerations
7. Lawyer Opinion Letters
8. Lease provisions:
 - a. Use restrictions
 - b. Expansion and renewal rights
 - c. Default provisions and remedies, including lock-out provisions
 - d. SNDAs and Tenant Estoppel Certificates
 - e. Workouts and effect of Bankruptcy
7. Listing and brokerage agreements for sales and leases
8. PIDs, TIFFs, TIRZs and other economic development agreements
9. Option Contracts and Rights of First Refusal
10. Section 1031 exchanges
11. Use restrictions and commercial development considerations
12. Commercial Landlord and Tenant rights and obligations
13. Lien rights

C. Residential Real Estate Law

1. Closing residential transactions
2. Construction loans and liens, including New Construction and Remodeling Contracts
3. Contracts for Deed/Executory Contracts (including Leases with Options to Purchase) and required disclosures and annual reporting
4. DTPA
5. Earnest Money Contracts and required Seller notices
6. Financing residential transactions, including
 - a. Home Equity Lending
 - b. Reverse mortgages
 - c. Truth-in Lending Disclosures
7. Homestead issues
8. Leasing (state law and local ordinances)
9. Seller's disclosure requirements, and resulting disputes and remedies
10. TREC forms, including brokerage and listing agreements
11. Texas Statutes affecting residential real estate
12. Title considerations

D. Farm and Ranch Real Estate Law

1. Adverse Possession – elements, required holding periods, defenses
2. Boundary disputes

3. ETJ, voluntary annexation, Development Agreements and other land use controls by counties, cities, and special purpose districts, including subdivision of farm and ranch property
4. Easements (express and implied), Rights-of-Way and Easements by Necessity and Prescription
5. Farm and Ranch Estate taxation and planning
6. Leases of Surface Estate (including Grazing Leases, Hunting Leases)
7. Liability of ranchers arising from operations and ownership of livestock
8. Nature, extent, quantity and quality of owner's estate or interest in real estate
9. Oil and gas rights and development, including relative rights of surface estate owners vs. mineral estate owners (including lessees)
10. Section 1031 exchanges
11. State and federal laws and regulations affecting farm and ranch property including Environmental laws (CERCLA, etc.)
12. Strips and gores
13. Surveying and boundary law and evidence
14. Texas Right to Farm Statute
15. Water Rights (surface owners' rights generally, rights to ground water, sale of water rights, conflicts between the state/public and owners of surface water rights and ground water)
16. Wind leases
17. Agricultural and open space ad valorem taxation and roll-back issues
18. homestead law
19. lien rights

E. The Texas Disciplinary Rules of Professional Conduct (*Applies to all subcategories*)

The ethics questions regarding this topic will involve an array of hypothetical fact situations which will cover several different aspects of ethical issues that arise in the practice of law. The questions will not be limited to the practice of any one specialty area, and consequently, an applicant is advised to be familiar with all provisions of the TDRPC.

SKILLS.

An applicant must demonstrate the ability to:

- Communicate effectively and persuasively to clients, counsel and courts
- Develop and evaluate strategies for solving a problem or accomplishing an objective
- Analyze and apply legal rules and principles
- Analyze, sort and use facts; plan and direct factual investigations
- Organize and manage a legal task efficiently within time constraints
- Represent a client consistent with applicable ethical standards
- Invoke and utilize the procedures normally required in the specialty area, including pleadings and filings
- Identify client issues that must be addressed for a favorable resolution

Specifically, an applicant must be able to:

- Evaluate a case, including available remedies and elements of damages and develop strategy and proposals for settlement
- Identify necessary parties

- Draft appropriate curative and conveyancing documents
- Assess actions/documents required by governmental agencies
- Initiate/respond to procedures to enforce rights of clients, including court actions involving real property
- Identify and draft the applicable documents for the transaction, including setting out terms required by or favorable for your client