

Wholesaling Laws

(Effective as of February 1, 2024)

There are 3 separate statutory codes governing wholesaling. All are detailed on page 2. They are substantially similar.

The bottom-line requirements for wholesalers are:

- A buyer must disclose to a seller of their intention to wholesale the property;
- A buyer must disclose they are selling their equitable interest/contract rights (versus selling the property) in all marketing, advertisements and communications with other parties;

It is important that each and every communication, ad, sign, post and communication have a disclosure that the wholesaler is marketing and selling their equitable interest or their contract rights. If a wholesaler places a sign in the front yard with their number and states: For Sale - 3 bed 2 bath, this is enough to possibly get fines by TREC.

Our suggested disclosure in a separate addendum to the TREC 1 to 4 is:

EQUITABLE INTEREST ADDENDUM

The Buyer and Seller agree and understand that the Buyer may sell an option or assign an interest in this Contract. The Seller agrees that the Buyer has the right to sell and assign their contract rights and equitable interest in the Property. Seller agrees there is no further approval needed from Seller to allow the assignment of this contract to a third party/end buyer.

If you would like to learn more about how Ceshker Group Title can assist you in your real estate efforts, reach out to schedule a time to meet with us.

No Attorney-Client Relationship Created by This Post.

No Legal Advice Intended.

Contact Your Attorney For Assistance.

Occupation Code Section 1101.0045.

Equitable Interests In Real Property. (a) A person may acquire an option or an interest in a contract to purchase real property and then sell or offer to sell the option or assign or offer to assign the contract without holding a license issued under this chapter if the person: (1) does not use the option or contract to purchase to engage in real estate brokerage; and (2) discloses in writing the nature of the equitable interest to any seller or potential buyer. (b) A person selling or offering to sell an option or assigning or offering to assign an interest in a contract to purchase real property without disclosing the nature of that interest as provided by Subsection (a)(2) is engaging in real estate brokerage.

Texas Administrative Code contains TREC rules applicable to real estate license holders. Texas Administrative Code Rule 535.6.

(a) A person may acquire an option or enter into a contract to purchase real property and then sell or offer to sell the option or assign or offer to assign the interest in the contract without having a real estate license if the person: (1) does not use the option or contract to purchase to engage in real estate brokerage; and (2) discloses the nature of their equitable interest to any potential buyer. (b) A person selling or offering to sell an option or assigning or offering to assign an interest in a contract to purchase real property without disclosing the nature of that interest to a potential buyer is engaging in real estate brokerage. (c) A license holder who is engaging in real estate brokerage by selling or buying or offering to sell or buy an option or assigning or offering to assign an interest in a contract to purchase real property must disclose to any potential seller or buyer that the principal is selling or buying an option or assigning an interest in a contract and does not have legal title to the real property. (d) A license holder acting on his or her own behalf or in a capacity described by §535.144(a) who is selling an option or assigning an interest in a contract to purchase real property must disclose to any potential buyer that the license holder is selling an option or assigning an interest in a contract and that the license holder does not have legal title to the real property.

Texas Property Code Section 5.0205. Before entering into a contract to sell an option or assign an interest in a contract to purchase real property, a person must disclose in writing to (1) any potential buyer that the person is selling only an option or assigning an interest in a contract and the person does not have legal title to the real property; and (2) to the owner of the real property that the person intends to sell an option or assign an interest in a contract.

Texas Property Code Section 5.086. Before entering into a contract, a person selling an option or assigning an interest in a contract to purchase real property must disclose to any potential buyer that the person is selling only an option or assigning an interest in a contract and that the person does not have legal title to the real property.