

# Clear as MUD

## Municipal Utility District Notification Compliance Made Easier

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**T**rying to find information to complete a Municipal Utility District (MUD) Notice can be a dirty job. Luckily, over the past year, the Texas Legislature and the Texas Real Estate Commission (TREC) have made it easier for the home seller to provide a complete MUD Notice.

To begin with, what is a MUD, and who regulates it?

In general, a MUD plays a crucial role in enabling development in areas that lack existing infrastructure. It is a political subdivision of the State of Texas authorized by the Texas Commission on Environmental Quality (TCEQ) to provide water, sewage, drainage, other utility-related services, and recreational services (such as parks, pools, and sport courts) within the MUD boundaries. They generally serve a master-planned community.

A MUD acts as a financing tool for developers to establish essential infrastructure in new developments. MUDs may adopt and enforce all necessary charges, fees, and taxes to provide district facilities and services. A board of directors, elected by the property owners, manages and controls all the MUD's affairs.

### Key Takeaways

- In 2023, the Texas Legislature revamped MUD Notice requirements for better accessibility.
- TREC introduced Form 59-0 to aid sellers in providing MUD Notices effectively.
- MUD Notices must be provided to buyers before contract execution or included as an addendum to the contract at the time of execution.
- Failure to deliver on time grants buyers termination rights or potential damages.
- Ensures transparency and smooth transactions, benefiting both buyers and sellers.

The MUD can issue bonds to cover upfront costs of building water treatment plants, sewage systems, drainage systems, or other services. Property taxes levied by the MUD then repay the bonds over time. This is why receiving a MUD Notice is so important to homebuyers: they need to know how much the current and future tax obligation on the property will be to the MUD before they agree to purchase the property.



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TCEQ is responsible for the general supervision and oversight of MUDs. This includes monitoring MUD activities and their compliance with state laws, providing information to the public, and reviewing applications for the formation of a MUD. Once a MUD is approved, TCEQ appoints a temporary board of directors until an election by property owners in the district can be called to elect permanent board members.

## What the Legislature Changed

In 2023, the Texas Legislature made significant changes to the MUD Notice form sellers are required to give to buyers. These changes were set out in HB 2815 and HB 2816, and the new laws became effective in June and September of 2023, respectively. These changed the responsibilities of sellers to notify buyers in the following ways:

- The three MUD Notice forms set out in the statute were repealed, and a new section (49.4521) setting out required language that must be contained in any MUD Notice was added. This means there is no longer a specific set form for MUD notices as long as the required information is included in the form provided.
- The prescribed notice must include the title “NOTICE TO PURCHASER OF SPECIAL TAXING OR ASSESSMENT DISTRICT” in at least 24-point bold font.
- The new notice requirements contain more detailed information about tax rates, assessments, and services.
- MUDs are now required to post a copy of a MUD Notice containing all the information required by Section 49.4521 applicable to their MUD on their website for public access (if they are required to maintain a public website under Section 26.18 of the Tax Code).

Overall, the changes in the bills aim to make MUD information more accessible to the public.

## New TREC Form

While most MUDs are required to make the notice available on their websites, there’s no guarantee that all are fully compliant, and there may be a few that are not required to post it. To help license holders assist their clients in these situations, TREC adopted a new voluntary form effective February 2024 entitled “Notice to Purchaser of Special Taxing or Assessment District” (TREC Form 59-0). This new form contains all required statutory language but has blanks to fill in the specific data for the MUD where the property

is located. License holders can provide this form to sellers when there is not another compliant MUD Notice available to them.

The new form contains a caution to license holders and sellers about its use:

“Section 49.453, Texas Water Code, requires each district to make the form of notice containing the information in this form available to the public on the district’s website or otherwise. *If available, Seller should use the district’s form instead of this form.* If the district does not have the form of notice on its website or does not publish a form of notice, Seller should obtain the information from the district and complete this form with the information from the district.”

In other words, if there is no MUD Notice posted, it is the seller’s job to supply the information to be inserted into the new TREC form, and the seller should get that information directly from the district. If the MUD Notice is not posted on the district’s website, sellers might be able to obtain the required information directly from the MUD’s office or in the county property records if the MUD filed a notice there.

PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC) 02-12-2024

**TREC** **NOTICE TO PURCHASER OF SPECIAL TAXING OR ASSESSMENT DISTRICT** **HOUSING OPPORTUNITY**

**NOTICE: Not for use for Public Improvement Districts (PIDs).**

Section 49.453, Texas Water Code, requires each district to make the form of notice containing the information in this form available to the public on the district's website or otherwise. **If available, Seller should use the district's form instead of this form.** If the district does not have the form of notice on its website or does not publish a form of notice, Seller should obtain the information from the district and complete this form with the information from the district.

**SELLER'S DISCLOSURE CONCERNING THE PROPERTY AT:**

(Street Address and City)

**1. NAME OF SPECIAL DISTRICT:** The real property that you are about to purchase is located in the \_\_\_\_\_ and may be subject to district taxes or assessments.  
(insert name of district)

**2. TAX RATE:** The district may, subject to voter approval, impose taxes and issue bonds. The district may impose an unlimited rate of tax in payment of such bonds. (Check only one box)

The current rate of the district property tax is \_\_\_\_\_ on each \$100 of assessed valuation.  
(insert current property tax rate)

The district has not yet imposed taxes. The projected rate of the district property tax is \_\_\_\_\_ on each \$100 of assessed valuation.  
(insert projected property tax rate)

**3. ASSESSMENTS:** The district may impose assessments and issue bonds and impose an assessment in payment of such bonds. (Check only one box)

The rate of the district assessment is \_\_\_\_\_ on each \$100 of assessed valuation.  
(insert current assessment amount)

The amount of the district assessment on the real property that you are about to purchase is \_\_\_\_\_.  
(insert current assessment amount)

The district has not yet imposed an assessment, but the projected  rate  amount of the assessment is \_\_\_\_\_.  
(insert projected assessment rate or amount)

**4. BONDS:**

A. The total amounts of bonds payable wholly or partly from  property taxes  assessments  
( excluding refunding bonds that are separately approved by the voters  excluding any bonds or any portions of bonds issued that are payable solely from revenues received or expected to be received under a contract with a governmental entity) approved by the voters are:

(1) \$ \_\_\_\_\_ for water, sewer, and drainage facilities;  
(insert amount)

(2) \$ \_\_\_\_\_ for road facilities;  
(insert amount)

(3) \$ \_\_\_\_\_ for parks and recreational facilities; and  
(insert amount)

(4) \$ \_\_\_\_\_ for \_\_\_\_\_ (insert description of additional facilities, as applicable)

B. The aggregate initial principal amounts of all such bonds issued are:

(1) \$ \_\_\_\_\_ for water, sewer, and drainage facilities;  
(insert amount)

(2) \$ \_\_\_\_\_ for road facilities;  
(insert amount)

(3) \$ \_\_\_\_\_ for parks and recreational facilities; and  
(insert amount)

(4) \$ \_\_\_\_\_ for \_\_\_\_\_ (insert description of additional facilities, as applicable)

Initialed for identification by Buyer \_\_\_\_\_ and Seller \_\_\_\_\_ TREC No. 59-0

## MUD Notice Delivery Requirements

Both the Texas Water Code and TREC contracts require the MUD Notice to be delivered. Section 49.452(a-1) of the Texas Water Code states “a person who proposes to sell or convey real property located in a district must give the purchaser the written notice as provided by this section and Section 49.4521.” Although MUD Notice content changed some, the delivery requirements of Section 49.452 did not. Even though they are not new, this is a good time for review.

Paragraph 6.E(3) of the One to Four Family Residential Contract (Resale) provides that if the property is in a district created under the Texas Water Code, that chapter “requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.” Note that the seller *and* buyer are on notice of their requirements to sign the MUD Notice before executing the contract. Further, Paragraph 6.E.(11) specifically names “MUD” as one of the required notices that “have been given or attached to this contract,” serving as a second reminder to license holders and the parties.

The most important services a license holder for either the seller or the buyer can provide is to know where the MUDs are located in the area they serve and make their clients aware of the MUD Notice delivery requirements. So, what are the delivery requirements?

- **Content:** As previously discussed, Section 49.4521 sets out the specific type and form of information required to be included in the MUD Notice. This new section provides for more information to be given to the buyer.

- **Timing:** The MUD Notice must be delivered to the buyer *before* the purchase contract is executed or included as an addendum to the contract at the time of execution.
- **Execution:** All sellers and buyers are required by the Texas Water Code to sign and date the MUD Notice. Sellers are signing the notice as they are providing it, and buyers are signing to acknowledge receipt (whether before execution of the contract or at closing of the contract).

## Consequences for Failing to Deliver

The bottom line for sellers and license holders is, if the seller fails to deliver the required notice to the buyer in a timely manner, the buyer has a right to terminate the contract at any time, up to and including the day of closing.

If a MUD Notice is not provided and the buyer closes on the property, the buyer may sue for damages in the future.

If, however, the seller delivers the required notice late, but before closing, and the buyer closes the purchase of the property, the buyer is deemed to have waived any right to terminate the contract or claim damages. 📌



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