

# Don't Piddle Around with PID Notices

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**P**ublic Improvement Districts (PID) are becoming more common in developing areas in Texas. Last year's complaints about nondisclosure of PID assessments by a builder from some North Texas homeowners prompted the Texas Legislature to pass HB 1543 to beef up PID disclosure notices to buyers and penalties for sellers who fail to deliver the notice. The new requirements went into effect Sept. 1, 2021.

A PID is a defined geographic area established to provide specific types of improvements or maintenance within that area. PIDs are created under Chapters 372 or 382 of the Local Government Code. Types of improvements and maintenance projects that can be approved for financing through a PID include landscaping, construction of sidewalks or roads, security, street lighting, and water facilities.

The statutes lay out a process where property owners (including developers and businesses) can petition cities and counties to create the PID and get financing for the desired improvements through bonds that are

## Takeaway

Local Government Code allows for Public Improvement Districts, or PIDs, which are created to provide improvements such as new sidewalks, roads, lighting, and landscaping. Recent changes to the code have added PID disclosure notice requirements to buyers and increased penalties for sellers who fail to deliver the notice.

repaid through special assessments levied by the city or county. The property owners establish an advisory board that has authority over the types of improvements and maintenance to be sought and the total amount of bonds required.

A public hearing is held before any bonds are issued. Property owners within a PID have a special assessment tax against their property to repay the bonds, in addition to regular property taxes. However, unlike other

property taxes, PID assessments are levied for only a set number of years, and a property owner can choose to pay the assessment up front instead of having it prorated over a number of years and save interest and administrative expenses. A PID special assessment is tax deductible in any year it is paid.

## How Does a PID Differ from a MUD?

A Municipal Utility District (MUD) is created under Chapter 49 of the Texas Water Code. It establishes a taxing entity to finance the construction and maintenance of water and wastewater infrastructure and other utilities.

A PID can be used for those types of utility improvements as well as other improvements and maintenance projects, as previously discussed. Unlike a PID, which has a fixed assessment amount and timeframe for repayment, a MUD has the authority to issue an unlimited amount of bonds and levy taxes to repay those bonds with no set end date.

If a property is in a MUD, the seller is required by law to give the buyer a statutory notice giving the buyer specific information about the MUD and the taxes levied *prior* to entering into a binding contract for sale. The MUD notice must be signed by the buyer. The statute outlines specific consequences for when a MUD notice is not timely delivered.

Until this past legislative session, the required PID notice was general and did not have to be signed by the buyer, so it was embedded in the Texas Real Estate Commission's (TREC) promulgated contract form. However, with the passage of HB 1543, the new PID notice requirements and consequences are expanded to be similar to the existing MUD notice requirements.

## New PID Notice Requirements

The new notice language alerts the buyer that the property is in a PID and an assessment has been made against the property for authorized improvements, which may be repaid in annual installments. It requires the name of the PID and the name of the city or county that approved the PID and makes the assessments be provided, and it warns of penalties and interest if the annual assessment is not paid. There are blanks for the statutory authority for the PID formation.

Interestingly, it does not contain a blank for the amount of the assessment or any payment schedule for the assessments, the main information a buyer wants to know.

The statute does allow the seller, city, or county to voluntarily add this information to the prescribed notice.

Beginning Sept. 1, 2021, sellers of all types of real estate (unless exempted) must provide the prescribed statutory notice to buyers *prior* to entering into a binding contract.

The bill expanded the type of properties that require a PID notice to more than residential. It now includes condominiums, commercial, new construction, and unimproved property. The notice may be given separately or as an addendum to the contract. The buyers' signatures are required on the notice as evidence of receipt.

Additionally, the statute requires that another copy of the prescribed PID notice with current information be executed by seller and buyer at the closing, notarized, and recorded in the deed records of the county where the PID is located. At the time of the writing of this article, it is unclear if that responsibility will remain with the seller or fall to the title company.

As of Sept. 1, 2021, PIDs are required to file a notice with the city or county when they file their next annual service plan update. This notice should contain the information required for sellers. The city or county has seven days after receiving the updated service plan to file a copy of it with the county clerk in each county in which any part of the PID is located. Once filed, the PID notice should be available on the PID's website. However, since the time for PIDs to file their annual updated service plan varies and could be well into 2022, there may be an information gap for sellers and their agents trying to complete the notice after Sept. 1, 2021.

## New TREC Addendum and More

TREC is helping sellers and their agents through this gap period in two ways.

First, TREC created a new addendum that contains the statutory notice for license holders to use with their sellers (see page 4). It became available Sept. 1, 2021, by emergency rule and through the regular rule-making process in November 2021.

The commission also updated its contract forms with the same two-step process to revise Paragraph 6.E.(7) regarding PID disclosures. They now require the new addendum be attached to the contract if the property lies within a PID.

## Where to Find Required PID Information

Until the PID's updated service plan with the new notice is filed with the appropriate county clerk, sellers and license holders will have to do some research to obtain information about the PID.

The first place to check is with the seller. However, since some PIDs may no longer charge assessments, the seller might not be aware the property is in a PID.

The next place to look is the county tax records. PIDs, like MUDs, are listed as entities on a tax bill. However, if it is a new home and a newly created PID, it may not appear on the tax rolls yet. A seller could also look on the city or county website to see if they keep a list of service districts, like MUDs, PIDs, and Public Utility Districts (PUDs). A seller who can confirm the PID's name may be able to find its website. Most, if not all, of the information a seller needs to complete the notice form should be available there.

A PID could be formed under one of two statutes: Chapter 372 or Chapter 382 of the Local Government Code. The vast majority are formed under Chapter 372, but until the PID updates the service plan, the seller may have to contact the PID directly to find out for sure.

## Consequences for Failing to Give the PID Notice

Here is why you don't want to piddle around with PID notices. The consequences for untimely delivering the PID notice were significantly changed. If the seller fails to give the PID notice to the buyer before the contract is executed, the buyer can:

- terminate the contract and have earnest money returned any time prior to closing;
- file a lawsuit for damages after closing, requiring the seller to repay all costs for the purchase of the property along with interest and reasonable attorney's fees, and the property will be reconveyed to the seller; or
- sue for damages in an amount not to exceed \$5,000, plus reasonable attorney's fees.

Note that the statute also provides that if the PID notice was not given prior to the execution of the contract but was given at closing, the buyer cannot sue the seller for damages.

## Exemptions

Section 5.014(c) provides that the PID notice is not required for transfers of property:

- under a court order or foreclosure sale;
- by a trustee in bankruptcy;
- to a lender from a mortgage debtor or to a beneficiary under a deed of trust by a trustor;
- by a lender or deed-of-trust beneficiary when the property was acquired under a deed-of-trust sale, court-ordered foreclosure, or deed in lieu of foreclosure;
- by a fiduciary in the course of administration of a decedent's estate, guardianship, conservatorship, or trust;
- from one co-owner to another of an undivided interest in the property;
- to a spouse or a blood relative;
- to or from a government entity; or
- of only a mineral interest, leasehold interest, or security interest.

These exemptions are the same as those previously in the statute, with one exception: transfer of an interest in a condominium was removed from the list; so, as mentioned earlier, sellers of condominiums are now required to give the notice if they are in a PID.

## Limits of Liability

Sellers, real estate license holders, title companies, and examining attorneys can rely on the accuracy of the service plans that have been filed with the county clerks.

The same group will not be held liable for damages if they unintentionally provide a notice that is not the correct notice under the circumstances or if the city or county failed to file the updated service plan with the required notice with the county clerk. ➡

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ADDENDUM CONTAINING NOTICE OF OBLIGATION TO PAY IMPROVEMENT DISTRICT ASSESSMENT TO (insert name of municipality or county levying assessment), TEXAS CONCERNING THE FOLLOWING PROPERTY

(insert property address)

As the purchaser of the real property described above, you are obligated to pay assessments to (insert name of municipality or county, as applicable), Texas, for the costs of a portion of a public improvement or services project (the "Authorized Improvements") undertaken for the benefit of the property within (insert name of public improvement district) (the "District") created under (insert Subchapter A, Chapter 372, Local Government Code, or Chapter 382, Local Government Code, as applicable).

AN ASSESSMENT HAS BEEN LEVIED AGAINST YOUR PROPERTY FOR THE AUTHORIZED IMPROVEMENTS, WHICH MAY BE PAID IN FULL AT ANY TIME. IF THE ASSESSMENT IS NOT PAID IN FULL, IT WILL BE DUE AND PAYABLE IN ANNUAL INSTALLMENTS THAT WILL VARY FROM YEAR TO YEAR DEPENDING ON THE AMOUNT OF INTEREST PAID, COLLECTION COSTS, ADMINISTRATIVE COSTS, AND DELINQUENCY COSTS.

The exact amount of the assessment may be obtained from (insert name of municipality or county, as applicable). The exact amount of each annual installment will be approved each year by (insert name of city council or county commissioners court, as applicable) in the annual service plan update for the district. More information about the assessments, including the amounts and due dates, may be obtained from (insert name of municipality or county, as applicable).

Your failure to pay any assessment or any annual installment may result in penalties and interest being added to what you owe or in a lien on and the foreclosure of your property.

Signature of Seller Date Signature of Seller Date

The undersigned purchaser acknowledges receipt of this notice before the effective date of a binding contract for the purchase of the real property at the address described above.

Signature of Buyer Date Signature of Buyer Date



This form has been approved by the Texas Real Estate Commission for use with similarly approved or promulgated contract forms. Such approval relates to this form only. TREC forms are intended for use only by trained real estate license holders. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not suitable for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 936-3000 (http://www.trec.texas.gov) TREC No. 53-0.