# Litigation Against Real Estate Agents and Brokers:

## Failure to Disclose Defects/Conditions

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## Common Causes of Action Against Brokers/ Agents

- Negligence
- Negligent Misrepresentation
- Breach of Contract
- DTPA Violations
- Common Law Fraud
- Fraud in a Real Estate Transaction

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# Texas Business and Commerce Code § 27.01

- Fraud in a real estate transaction . . . 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) 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.
- Does NOT require actual knowledge of the falsity of the misrepresentation
- Any person who violates the provisions of this section shall be liable to the person defrauded for reasonable and necessary **attorney's fees**, **expert witness fees**, costs for copies of depositions, and costs of court.

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# Seller's Duty: Section 5.008 of the Texas Property Code

- "**A seller** of residential real property comprising not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice as prescribed by this section or a written notice substantially similar to the notice prescribed by this section which contains, at a minimum, all of the items in the notice prescribed by this section."

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2018 William W. Gibson, Jr. Mortgage Lending and Servicing eConference

First appeared as part of the conference materials for the
52nd Annual William W. Gibson, Jr. Mortgage Lending and Servicing Institute session
"Litigation Against Real Estate Agents and Brokers"