

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. CIV. P. 190.3.

JURISDICTION

2. Under § 17.47 of the DTPA, the Consumer Protection and Public Health Division of the Office of the Attorney General may bring an action whenever it has reason to believe that any person is engaging in, has engaged in, or is about to engage in any false, misleading or deceptive act or practice in the conduct of any trade or commerce.

3. Under § 17.47(d) of the DTPA the Court may make such orders or judgments as are necessary to compensate identifiable persons for damages or to restore money or property acquired by means of any unlawful act or practice.

4. Under the authority granted by the Real Estate License Act, the State may seek civil penalties and injunctive relief for violations of the Real Estate License Act.

PARTIES

5. Defendant GILBERT ROMO, a/k/a GILBERTO ROMO, age 58, is an individual residing in El Paso, El Paso County, Texas and is doing business in the State of Texas as NEBRAM ENTERPRISES. Defendant may be served with process at 2101 Sea Cove, El Paso, Texas 79936.

6. Defendant EDWARD ALEXANDER ROMO, age 29, believed to be the son of Defendant GILBERTO ROMO, is an individual residing in El Paso, El Paso County, Texas and is doing business in the State of Texas as NEBRAM ENTERPRISES. Defendant may be served with process at 11608 Clear Lake, El Paso, Texas 79936.

7. Defendant PAUL GABRIEL ROMO, age 25, believed to be the son of Defendant

GILBERTO ROMO, is an individual residing in El Paso, El Paso County, Texas and is doing business in the State of Texas as NEBRAM ENTERPRISES. Defendant may be served with process at 2101 Sea Cove, El Paso, Texas 79936.

8. WILLIAM EHRLICH, Trustee, and any substitute Trustees, are joined herein in their capacity as Trustees under the Deed of Trust dated June 30, 2005, executed by Francisco Rivas to secure the payment of a promissory note originally payable to Wolverine Finance, LLC. Mr. Ehrlich may be served with process at Scherr, Legate & Ehrlich, PLLC, 109 N. Oregon Str, 12th Floor, El Paso, Texas.

VENUE

9. Venue of this action lies in El Paso County on the following grounds:

(a) Under TEX. CIV. PRAC. & REM. CODE §15.001 for the reason that the cause of action or a part thereof, accrued in said county.

(b) Under TEX. CIV. PRAC. & REM. CODE §15.001, venue is proper because all or part of the causes of action alleged herein accrued in El Paso County, Texas.

(c) Under the DTPA §17.47(b), venue is proper because Defendants have done business in El Paso County, Texas.

(d) Under the DTPA §17.47(b) because Defendants's principal place of business is located in El Paso County, Texas.

(e) Under the Real Estate License Act, §1101.752, because the violations occurred in and Defendants reside in El Paso County.

ACTS OF AGENTS

10. Whenever in this petition it is alleged that Defendants did any act or thing, it is meant

that Defendants performed or participated in such act or thing or that such act was performed by Defendants's officers, agents, or employees and in each instance Defendants's officers, agents, or employees were then authorized to and did in fact act on behalf of Defendants.

PUBLIC INTEREST

11. By reason of the institution and operation of the unlawful practices set forth herein Defendants caused loss and damage to the STATE OF TEXAS, and will also cause adverse effects to legitimate business enterprise which conduct trade and commerce in a lawful manner. Therefore, the Attorney General of Texas is of the opinion that these proceedings are in the public interest.

NOTICE BEFORE SUIT NOT GIVEN

12. Pursuant to §17.47(a) of the Deceptive Trade Practices Act, contact has not been made with the Defendants herein to inform Defendants of the unlawful conduct alleged herein, for the reason that the Consumer Protection Division is of the opinion that there is good cause to believe that the Defendants would evade service of process or would destroy relevant records if prior contact were made.

TRADE AND COMMERCE

13. At all material times herein, the Defendants have engaged in conduct, as more fully set forth herein, which constitutes "trade" and "commerce" as those terms are defined by DTPA §17.45(6).

NATURE OF DEFENDANTS' OPERATIONS

14. Defendants operate a business in El Paso, El Paso County, Texas, in which they, for another, and for a fee, commission, or other valuable consideration, or with the intention or on the

promise of receiving any valuable consideration, offer to, attempt to, or agree to perform, or do sell, exchange, purchase, rent, or lease real estate. Defendants, in the course and conduct of their business operations, accept money from consumers as down payment for property and thereafter fail to deliver possession of said property to the consumers.

15. Furthermore, Defendants, in the course and conduct of their business operations, induce consumers to give them earnest money on a real estate transaction by telling them that they will be able to assist with the consumers' financial negotiations to obtain mortgage financing on the real property purportedly being sold by Defendants when, in fact, Defendants know that the consumer will not be able to obtain the necessary financing.

16. Defendants have not refunded any moneys despite repeated demands by consumers.

17. Furthermore, Defendants have acted as a real estate broker or real estate salesperson without first obtaining a license from the Texas Real Estate Commission and have received money or other consideration as a fee, commission, compensation, or profit by or in consequence of acting as a real estate broker or agent without first obtaining a license.

18. In addition to the facts set forth below concerning operations since 2004, the State would show the Court that in 1991 and 1992, the Texas Real Estate Commission investigated Defendant GILBERT ROMO, and on or about April 14, 1992, sent him a letter demanding that Defendant "cease and desist" from any unlicensed real estate brokerage activity.

19. Because Defendant GILBERT ROMO continued to engage in the practices described above, the TEXAS REAL ESTATE COMMISSION referred the matter to the Office of the Attorney General, which filed suit against him on October 24, 1994. A true and correct copy of the Petition in that suit is attached to this petition as Exhibit "A", and by this reference made a part hereof.

20. Defendant GILBERT ROMO defaulted in that suit, numbered 94-11547, and the State of Texas took a default judgment against him, on March 9, 1995. A true and correct copy of the abstract of judgment in that case is attached to this petition as Exhibit “B”, and by this reference made a part hereof.

21. Defendants have engaged in at least two transactions with the below named consumers in violation of the DTPA, as follows:

A. Mario Castillo and Anabel Perez (“Castillo and Perez”)

- i. In August, 2005, Castillo and Perez saw an advertisement in the Thrifty Nickle for a house for sale at 10037 Alcan, El Paso, Texas. They called the telephone number in the advertisement and reached Defendant EDWARD ALEXANDER ROMO. He instructed them to come to his office at 2315 Grant. This is the address shown in the Assumed Name Certificate for NEBRAM ENTERPRISES.
- ii. The consumers met with Mr. Romo on August 11, 2005, and he prepared and had them sign a One to Four Family Residential Contract (Resale), whereby they were offering to purchase the property at 10037 Alcan. EDWARD ALEXANDER ROMO signed the Contract on behalf of NEBRAM ENTERPRISES.
- iii. On August 11, 2005, Defendant EDWARD ALEXANDER ROMO collected from Castillo and Perez the sum of \$1,000.00 as earnest money for the Contract, and \$3,000 as part of the “down payment” on the residence. On August 15, 2005, Defendant EDWARD ALEXANDER ROMO collected

from Castillo and Perez an additional \$4,000.00 as more of the “down payment.”

- iv. EDWARD ALEXANDER ROMO told Castillo and Perez they could move into the residence in October, 2005, and they did so, and have resided there since then. However, there was never a closing on the Contract, and Castillo and Perez never received a deed to the property.
- v. On November 7, 2005, Defendant PAUL GABRIEL ROMO collected from Castillo and Perez the sum of \$510.00, as the installment payment for October, 2005.
- vi. On January 3, 2006, Defendant GILBERT ROMO collected from Castillo and Perez the sum of \$1,430.00, as the installment payments for November and December, 2005 and January, 2006. Castillo and Perez have attempted to reach Defendants to make the installment payments for February and March, 2006, but Defendants have not returned their telephone calls.
- vii. Defendants, under the name NEBRAM ENTERPRISES, had acquired title to the 10037 Alcan property by deed dated June 30, 2005, from Ilse Theresa Gay.
- viii. Unknown to Castillo and Perez, however, Defendants transferred title to the property on the very same day, June 30, 2005, to Francisco Rivas. At the time Defendants contracted to sell the property to Castillo and Perez, they did not have title to it.
- ix. It is unknown what Defendants did with the payments made to them by

Castillo and Perez, but according to a Notice of Foreclosure Sale posted on March 14, 2006, the property is scheduled to be sold at a foreclosure sale on April 4, 2006. The Notice of Foreclosure Sale states that Francisco Rivas defaulted in payments on a Deed of Trust dated June 30, 2005.

B. Oscar and Selene Nuñez (“Mr. & Mrs. Nuñez”)

- i. Mr. & Mrs. Nuñez saw a residence located at 10908 Nathan Bay, El Paso, Texas, that was advertised for sale by EDWARD ALEXANDER ROMO. They met with him on October 27, 2005 at the Grant Ave. address, and he prepared a One to Four Family Residential Contract (Resale), whereby they were offering to purchase the property at 10908 Nathan Bay from Mario Gonzalez, the record title holder of the residence. EDWARD ALEXANDER ROMO collected from Mr. & Mrs. Nuñez the sum of \$1,500.00 as earnest money at that time.
- ii. Some short time after October 27, GILBERT ROMO informed Mr. & Mrs. Nuñez that the house had sold to another party for more money than they were offering. GILBERT ROMO said he had other houses to show them, but he needed \$2,500.00 more as a down payment. They paid this amount to GILBERT ROMO, and he showed them houses at 8703 Clavel and 9961 Sidewinder, El Paso, Texas. However, neither GILBERT ROMO, EDWARD ALEXANDER ROMO nor PAUL GABRIEL ROMO presented another contract to them. Mr. & Mrs. Nuñez have asked for their \$4,000.00 back, but

Defendants have refused to refund that amount to them.

C. Other Consumers

- i. The State is currently not aware of other specific consumers who have been victims of Defendants' deceptive practices. However, the deed records of El Paso County, Texas contain documents evidencing thirty-two other transactions wherein NEBRAM ENTERPRISES bought and sold real estate in the past two years. Given GILBERT ROMO's history and the outrageous nature of the treatment visited upon Castillo and Perez and Mr. & Mrs. Nuñez, it is likely that other consumers have similarly been deceived. And, since the transaction with Mr. & Mrs. Nuñez did not leave any evidence in the deed records, there may be many other victims who were treated the same.

22. Defendants have failed to disclose that they are not licensed to sell, exchange, purchase, rent or lease real estate in the State of Texas.

23. At the time consumers paid Defendants money in exchange for their promise to provide services, Defendants did not disclose to potential purchasers of Defendants' services that they failed to provide similar services to other persons who previously paid them and had not received the services promised. This fact was known to Defendants and Defendants' failure to disclose it was intended to induce consumers into transactions which they would not have entered if the information were disclosed.

TEXAS REAL ESTATE LICENSE ACT VIOLATIONS

24. Defendants, as alleged above and detailed below, have in the course of trade and commerce committed violations of the Real Estate License Act as alleged in the above paragraphs, which are incorporated for reference herein.

25. Defendants have violated §1101.351 of the Real Estate License Act which states that it is unlawful for a person to act in the capacity of, engage in the business of, or advertise or hold himself out as engaging in or conducting the business of a real estate broker or a real estate salesman within this state without first obtaining a real estate license from the Texas Real Estate Commission. Defendants have engaged in activities defined and listed in §1101.652 (b) of the Real Estate License Act, which would be violations of the Real Estate License Act if Defendants were licensed brokers or salespersons.

FALSE, MISLEADING, AND DECEPTIVE ACTS

26. Defendants, as alleged above and detailed below, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §17.46(a) and (b) of the DTPA. Such acts include:

(a) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not, as alleged more specifically in paragraphs 13 through 23 above, in violation of §17.46(b)(5);

(b) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another, as alleged more specifically in paragraphs 13 through 23 above, in violation of §17.46(b)(7);

(b) Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, as alleged more specifically in paragraphs 13 through 23 above, in violation of §17.46(b)(12);

(c) Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, as alleged more specifically in paragraphs 13 through 23 above, in violation of §17.46(b)(24).

INJURY TO CONSUMERS

27. By means of the foregoing unlawful acts and practices, Defendants have acquired money or other property from identifiable persons to whom such money or property should be restored, or whom in the alternative are entitled to an award of damages.

INJUNCTIVE RELIEF

28. Because Defendants have engaged in the unlawful acts and practices described herein, Defendants should be enjoined from making the following representations and doing the following acts and engaging in the following practices in the pursuit and conduct of trade or commerce within the State of Texas as follows:

(a) Transferring, concealing, destroying or removing from the jurisdiction of this Court any books, records, documents, invoices, or other written materials relating to Defendants' business which are in Defendants' possession, custody, or control except in response to further orders or subpoenas in this cause;

(b) Transferring, spending, concealing, encumbering or removing from the jurisdiction

of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property (real, personal or mixed) wherever situated, belonging to or owned by, in possession of, arising out of or derived from Defendants' business operation within the State of Texas, save and except for reasonable and necessary expenditures in the ordinary course of business;

(c) Maintaining or advertising an office or business in Texas negotiating real estate transactions, until such time as Defendants have obtained a real estate broker or real estate salesperson license from the Texas Real Estate Commission;

(d) Collecting or accepting money or other consideration from consumers for the sale, exchange, purchase, rental or lease of real estate, until Defendants have obtained a real estate broker or real estate salesperson license from the Texas Real Estate Commission;

(e) Executing any deeds, contracts of sale, lease agreements, mortgage instruments, or any other conveyancing documents involving the sale, exchange, purchase, rental or lease of real property in the State of Texas until such time as Defendants have obtained a real estate broker or real estate salesperson license from the Texas Real Estate Commission;

(f) Accepting any future payments related to or arising in any way from the sale, exchange, purchase, rental or lease of real properties from any person until such time as Defendants have complied fully with all applicable provisions of the Texas Real Estate License Act;

(g) Accepting money or other consideration from consumers for the sale, exchange, purchase, rental or lease of real estate without first providing the proper contract documents, including, but not limited to, a warranty deed, a truth-in-lending statement, a HUD-1 Settlement Statement, and a title policy or similar document;

(h) Entering into any agreements for the sale, exchange, purchase, rental or lease of real estate at any time when Defendants do not have either the title to the property or authorization from the owner of the property to sell same;

(i) Entering into any agreement for the sale, exchange, purchase, rental or lease of real estate without first disclosing to all prospective parties to said agreement whether or not Defendants are licensed by the Texas Real Estate Commission; and,

(j) Entering into any agreement for the sale, exchange, purchase, rental or lease of real estate until all moneys taken from consumers in all prior transactions, when Defendants are not licensed by the Texas Real Estate Commission, have been fully and finally refunded, with interest.

(k) Utilizing any form promulgated by the Texas Real Estate Commission.

29. Because Castillo and Perez have an equitable claim to title to the property at 10037 Alcan, El Paso, Texas, the State asks that the Court enjoin WILLIAM EHRLICH, as Trustee, and any Substitute Trustee acting under him, from conducting a foreclosure sale on said property until title to same can be resolved herein.

**NECESSITY OF IMMEDIATE RELIEF
TO PRESERVE DEFENDANTS' ASSETS**

30. Plaintiff the State of Texas requests immediate relief by way of an Ex Parte Temporary Restraining Order freezing Defendants' assets to preserve and protect such assets from dissipation so the victims of Defendants' actions can receive the restitution to which they are entitled. Defendants' assets are subject to dissipation for the reason that Defendants misrepresent their business as being authorized as licensed real estate brokers or salespersons when in fact they are not. Defendants are not properly licensed or bonded and do not account to the Texas Real Estate Commission for their activities. They collect large sums of money from consumers, in cash, without

being legally entitled to do so. As a result, all of the money received by Defendants under the guise of being real estate brokers or salespersons is contraband. Further, Defendant GILBERT ROMO has already been sued by the State for these very same types of actions, and has not ceased them.

PRE-JUDGMENT INTEREST

31. Because Defendants have unlawfully acquired money or other property from identifiable persons, Plaintiff is entitled to receive pre-judgment interest on all awards of restitution, damages, and civil penalties.

PRAYER

32. Because Defendants have engaged in the unlawful acts and practices described herein, Defendants have violated and continue to violate the laws as herein alleged. Defendants, unless enjoined by this Court, will continue in violation of the laws of the State of Texas and loss and damage will result to the State of Texas and to the general public.

33. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that an Ex Parte TEMPORARY RESTRAINING ORDER be granted without notice to Defendants GILBERT ROMO, a/k/a GILBERTO ROMO, EDWARD ALEXANDER ROMO, and PAUL GABRIEL ROMO, Individually, and d/b/a NEBRAM ENTERPRISES, and that said Defendants be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued restraining and enjoining said Defendants and their agents, servants, employees and representatives from engaging in the following activities:

(a) Transferring, concealing, destroying or removing from the jurisdiction of this Court any books, records, documents, invoices, or other written materials relating to Defendants' business which are in Defendants' possession, custody, or control except in response to further orders or subpoenas in this cause;

(b) Transferring, spending, concealing, encumbering or removing from the jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property (real, personal or mixed) wherever situated, belonging to or owned by, in possession of, arising out of or derived from Defendants' business operation within the State of Texas, save and except for reasonable and necessary expenditures in the ordinary course of business;

(c) Maintaining or advertising an office or business in Texas negotiating real estate transactions, until such time as Defendants have obtained a real estate broker or real estate salesperson license from the Texas Real Estate Commission;

(d) Collecting or accepting money or other consideration from consumers for the sale, exchange, purchase, rental or lease of real estate, until Defendants have obtained a real estate broker or real estate salesperson license from the Texas Real Estate Commission;

(e) Executing any deeds, contracts of sale, lease agreements, mortgage instruments, or any other conveyancing documents involving the sale, exchange, purchase, rental or lease of real property in the State of Texas until such time as Defendants have obtained a real estate broker or real estate salesperson license from the Texas Real Estate Commission;

(f) Accepting any future payments related to or arising in any way from the sale, exchange, purchase, rental or lease of real properties from any person until such time as Defendants have complied fully with all applicable provisions of the Texas Real Estate License Act;

(g) Accepting money or other consideration from consumers for the sale, exchange, purchase, rental or lease of real estate without first providing the proper contract documents, including, but not limited to, a warranty deed, a truth-in-lending statement, a HUD-1 Settlement Statement, and a title policy or similar document;

(h) Entering into any agreements for the sale, exchange, purchase, rental or lease of real estate at any time when Defendants do not have either the title to the property or authorization from the owner of the property to sell same;

(i) Entering into any agreement for the sale, exchange, purchase, rental or lease of real estate without first disclosing to all prospective parties to said agreement whether or not Defendants are licensed by the Texas Real Estate Commission;

(j) Entering into any agreement for the sale, exchange, purchase, rental or lease of real estate until all moneys taken from consumers in all prior transactions, when Defendants are not licensed by the Texas Real Estate Commission, have been fully and finally refunded, with interest; and

(k) Utilizing any form promulgated by the Texas Real Estate Commission.

34. Plaintiff further prays that the Court temporarily restrain WILLIAM EHRLICH, as Trustee, and any Substitute Trustee acting under him, or receiving notice of the order from conducting a foreclosure sale on the property at 10037 Alcan, El Paso, Texas until title to same can be resolved herein, and that after notice and hearing, said Trustees be temporarily enjoined and upon final trial, permanently enjoined, from foreclosing upon said property.

35. Plaintiff further prays that upon final hearing this Court order Defendants to pay civil penalties of up to \$20,000.00 per violation to the State of Texas for violations of the DTPA.

36. Plaintiff further prays that upon final hearing this Court order Defendants to pay civil penalties in an amount not less than the amount of money received in violation of the Real Estate License Act, but no more than three times the amount received, pursuant to §1101.754 of said Act.

37. Plaintiff further prays for the Court to order Defendants to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or in the alternative, award judgment for damages to compensate for such losses.

38. Plaintiff further prays for attorney's fees and costs pursuant to §402.006(c), Texas Government Code and pursuant to §1101.753 of the Real Estate License Act.

39. Plaintiff further prays for pre-judgment interest on all awards of restitution, damages, and civil penalties as provided by law.

40. Plaintiff further prays for any other relief to which Plaintiff may be justly entitled under the law.

DATED this ____ day of March, 2006.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

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First Assistant Attorney General

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STATE OF TEXAS §
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COUNTY OF EL PASO §

BEFORE ME, the undersigned authority, on this day personally appeared PATRICIA M. ACOSTA, who after being by me duly sworn, upon her oath deposed and said that the affiant is an Investigator for the Consumer Protection and Public Health Division and as such is authorized to make this affidavit, that the affiant carefully read the allegations in the foregoing pleading and has reason to believe that each and all of said allegations are true and correct, and that Defendants have violated the provisions of the Texas Deceptive Trade Practices Act.

PATRICIA M. ACOSTA, Affiant

SUBSCRIBED AND SWORN TO before me on the _____ day of March, 2006.

Notary Public, State of Texas